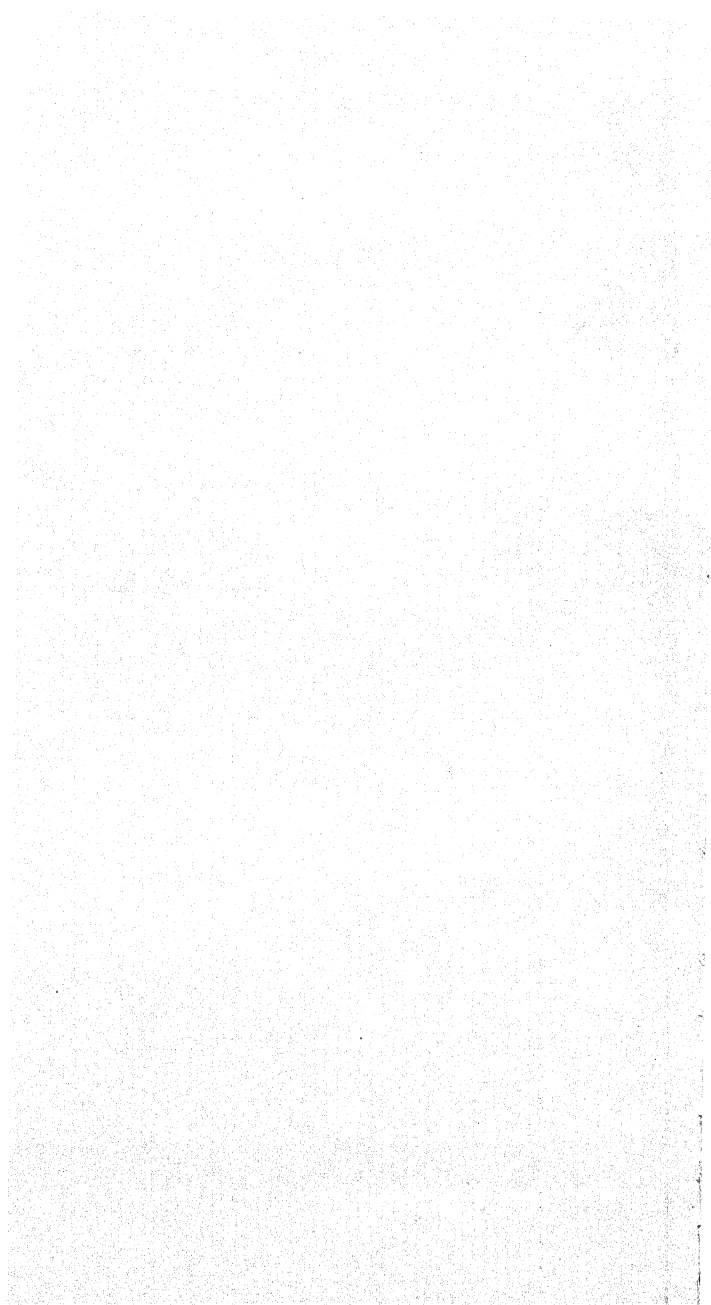


**LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION**

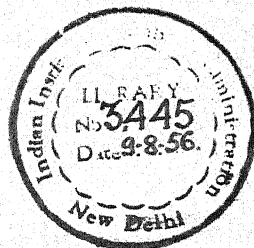
VOLUME XIII



LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By
THE RIGHT HONOURABLE THE
LORD MACMILLAN, G.C.V.O.
AND OTHER LAWYERS

VOLUME XIII
SUNDAY ENTERTAINMENTS
to
WORKS COMMITTEES



LONDON
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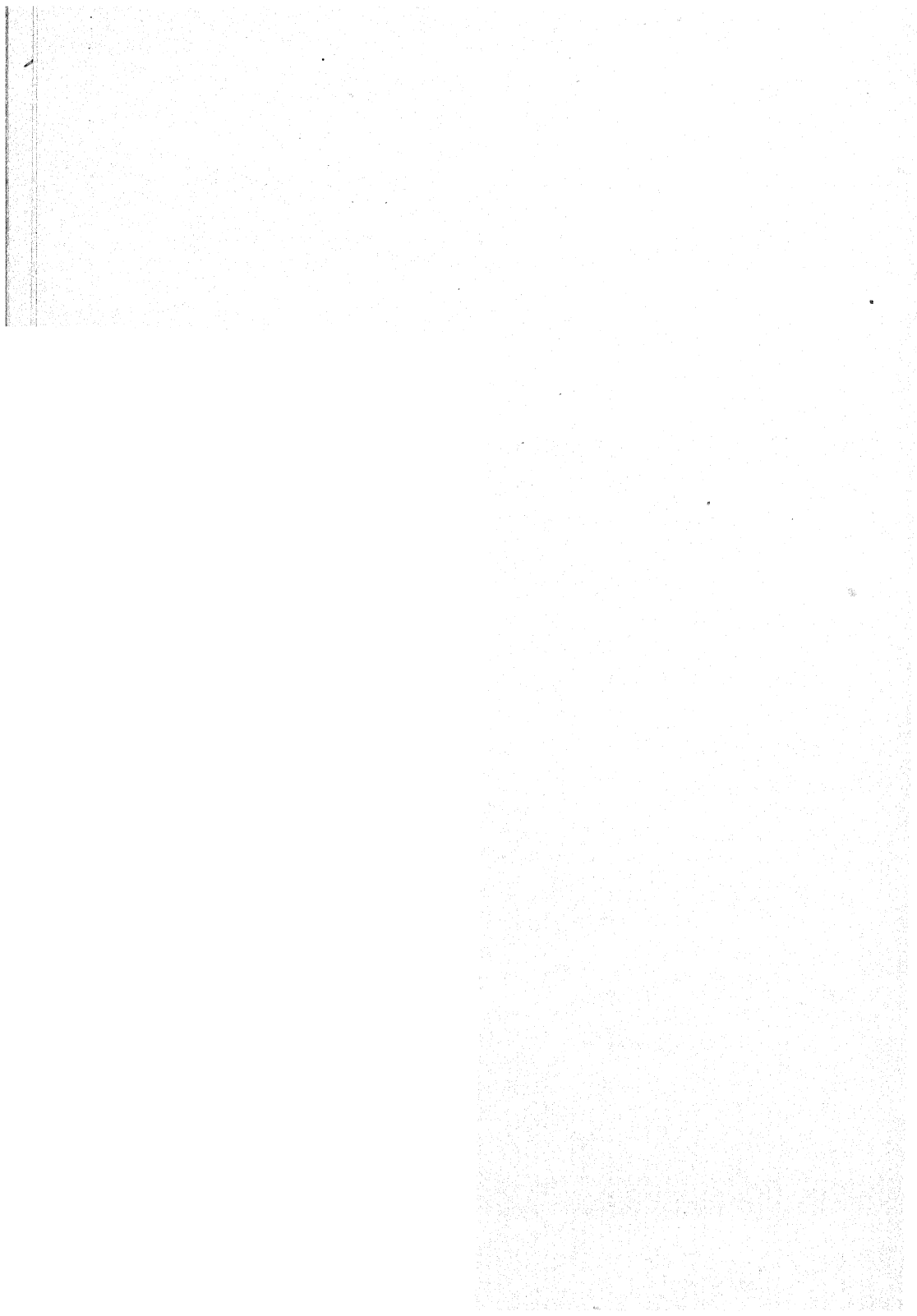


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THE ENGLISH AND EMPIRE DIGEST

In addition to the usual citation of the reports of cases in the footnotes, there will be found a reference to the volume, page, and case number at which the case appears in the Digest. Thus:

Clegg v. Hands (1890), 44 Ch. D. 503 ; 31 Digest 109, 2448.

HALSBURY'S COMPLETE STATUTES OF ENGLAND

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Local Loans Act, 1875 ; 12 Halsbury's Statutes 242.

ALL ENGLAND LAW REPORTS

After cases heard since February 1936, references are given to this series of reports thus :

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SUNDAY ENTERTAINMENTS

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SUNDAY OBSERVANCE ACTS

Preliminary.—Subject to the exceptions contained in the Sunday Entertainments Act, 1932 (*a*), which has made important modifications of the law relating to Sunday entertainments, the position of public entertainments on Sunday is governed by the Sunday Observance Acts, 1625 and 1677, which are general in scope, and the Sunday Observance Act, 1780, which is specifically concerned with public entertainments. [1]

The Sunday Observance Acts, 1625 and 1677.—The Sunday Observance Act, 1625 (*b*), prohibits the meeting out of their own parishes on Sunday of assemblies or concourse of people for any sports or pastimes whatsoever, and any bearbaiting, bullbaiting, interludes, common plays or other unlawful exercises or pastimes used by any persons within their own parishes. Offenders are liable to a fine of three shillings and fourpence which can be levied by distress. Proceedings must be taken within one month of the commission of the offence. The Sunday Observance Act, 1677 (*c*), prohibits tradesmen, artificers, workmen, labourers or other persons whatsoever from doing or exercising any worldly labour, business or work of their ordinary callings upon Sunday, works of necessity and charity only excepted. The words "tradesmen, artificers, workmen, labourers or other persons whatsoever" are to be strictly construed and "other persons whatsoever" only includes persons *ejusdem generis* (*d*). A tradesman means a person carrying on business, an artificer a person who makes something, a workman or labourer a person in employment (*e*).

(*a*) 25 Halsbury's Statutes 921. See *post*, p. 5.

(*b*) 4 Halsbury's Statutes 321.

(*c*) *Ibid.*, 325. See also Shops (Sunday Trading Restriction) Act, 1936, s. 14 ; 29 Halsbury's Statutes 152.

(*d*) *Sandiman v. Breach* (1827), 7 B. & C., at p. 100 ; 42 Digest 938, 100.

(*e*) *Palmer v. Snow*, [1900] 1 Q. B. 725 ; 42 Digest 938, 105. The Act does not, therefore, apply to a soldier engaged in enlisting men for the army, *Wolton v. Gavin*

Offenders are liable to a penalty of five shillings which can be levied by distress to forfeiture of goods exposed for sale (f). Proceedings must be taken within ten days after the commission of the offence (f). [2]

The Sunday Observance Act, 1780.—Any house, room or other place opened or used for public entertainment or amusement or for public debating on any subject whatsoever, upon any part of Sunday and to which persons are admitted by payment of money or by tickets sold for money is deemed a disorderly house or place (g), the keeping of which is a nuisance at common law (h).

Any house, room or place at which persons are supplied with tea, coffee or any other refreshments of eating or drinking on Sunday at a greater price than the common and usual prices at which such refreshments are sold on other days at such premises are deemed to be premises to which persons are admitted by the payment of money, although the money is not taken in the name of and for admission or at the time when the persons enter or leave the premises (i). Premises opened or used for public entertainment or amusement or public debate on Sunday at the expense of subscribers or contributors, and to which persons are admitted by tickets to which the subscribers or contributors are entitled, are also deemed a house, room or place to which persons are admitted by the payment of money within the meaning of the Act.

Where a charge is made for reserved seats but admission is free, however, it has been held that there is no infringement of the Act (k). The question as to whether any particular proceedings or activities come within the meaning of the Act must essentially be a question of fact, but there have been a number of judicial decisions which are of some guidance. Where the proceedings at meetings held on Sunday evenings in a hall registered for that purpose as a place of religious worship comprised a performance of sacred music and the delivery of an address, sometimes of a religious tendency, sometimes neutral, but never profane there being "no debating or discussion, nothing dramatic or comic or tending to the corruption of morals, or to the encouragement of irreligion or profanity" and admission to the body of the hall was gratuitous, although tickets were sold and money taken for admission to reserved seats, the objects of the promoters not being pecuniary gain, it was decided that such proceedings did not constitute an "entertainment or amusement" within the Act (l).

(1850), 16 Q. B. 48; 42 Digest 987, 88; a solicitor, *Peate v. Dickens* (1834), 1 Cr. M. & R. 422; 42 Digest 989, 110; a barber, *Palmer v. Snow*, ante, p. 1; a farmer, *R. v. Silvester* (1864), 10 Jur. (N. s.) 360; 42 Digest 988, 103; sub nom. *R. v. Cleworth* (1864), 4 B. & S. 927; or the owner of a stage coach, *Sandiman v. Breach*, ante, p. 1; *Ex parte Middleton* (1824), 3 B. & C. 164; 42 Digest 988, 99.

(f) Sunday Observance Act, 1877. Consent of the chief officer of police is necessary; Sunday Observation Prosecution Act, 1871; 4 Halsbury's Statutes 669. This Act only affects Sunday entertainments so far as the employment of artisans, workmen or labourers is involved.

(g) Sunday Observance Act, 1780, s. 1; 4 Halsbury's Statutes 379.

(h) *R. v. Higginson* (1762), 2 Burr. 1232; 15 Digest 754, 8129.

(i) Sunday Observance Act, 1780, s. 2; 4 Halsbury's Statutes 380.

(k) *Williams v. Wright* (1897), 13 T. L. R. 551; 15 Digest 759, 8176.

(l) *Baxter v. Langley* (1868), L. R. 4 C. P. 21; 15 Digest 759, 8173. "It is sufficient to say that in our opinion a place duly and honestly registered as a place of public worship in which no music but sacred music is performed or sung, where nothing dramatic is introduced, where the discourses delivered are intended to be instructive and contain nothing hostile to religion, where the objects of the promoters may be either to advance their own views of religion or as they allege 'to

On the other hand, where a building which was open on Sundays to the public on payment of sixpence comprised an aquarium for the exhibition of marine fish and animals, a reading room with newspapers, a restaurant, dining-hall and conservatories and various objects of interest including illuminated microscopes were exhibited and a band played sacred music on Sundays (programmes being issued to state what music would be played and when the fish would be fed), it was held to be a place of entertainment and amusement within the statute (*m*). The fact that subsequently, in respect of the same building, the reading room was used on weekdays only, the band music on Sundays was discontinued and newspapers and illuminated microscopes were not provided, did not prevent it from still being a place of amusement within the meaning of the Act (*n*). [3]

Penalties under Act of 1780.—The keeper of every house, room or place opened or used for the purposes mentioned above on Sundays is liable to forfeit the sum of two hundred pounds for every day the premises are opened or used to such persons as will sue for the same, and is also punishable as the law directs in cases of disorderly houses (*o*).

Any person who appears to act, or behaves as master or mistress or as the person having the care, government or management of such premises is deemed to be the keeper and is liable to be sued or prosecuted and punished, notwithstanding he or she be not the real owner or keeper; and where such premises are owned by persons in partnership as joint owners or joint keepers all such persons are deemed to be the owners or keepers and liable to prosecution and punishment (*p*).

The person managing or conducting any entertainment or amusement which infringes the Act or acting as master of the ceremonies there or as moderator, president or chairman of any meeting for public debate, is liable for every offence to forfeit the sum of one hundred pounds to such person as will sue for such amount and every door-keeper, servant or other person who collects or receives money or tickets from persons assembling at such premises on Sunday or who delivers out tickets for admitting persons to such premises on Sunday is similarly liable to forfeit the sum of fifty pounds (*q*).

make science the handmaid of religion' is not 'used for public entertainment or amusement' within the statute," *per* BYLES, J., at p. 25.

(*m*) *Terry v. Brighton Aquarium Co.* (1875), L. R. 10 Q. B. 306; 15 Digest 759, 8174.

(*n*) *Warner v. Brighton Aquarium Co.* (1875), L. R. 10 Ex. 291; 15 Digest 759, 8175.

(*o*) Sunday Observance Act, 1780, s. 1; 4 Halsbury's Statutes 379. See also Disorderly Houses Act, 1751, s. 2; 4 Halsbury's Statutes 360. In an action for the recovery of a penalty the defendants pleaded in bar a judgment in favour of a third party for the recovery of same penalty. This judgment had been obtained in an action which was commenced with the defendants' consent in the name of another plaintiff while the first-mentioned action was pending, and was carried through by intervention of a solicitor employed by the defendants and without interference of such other plaintiff for the protection of the defendants from any action brought or to be brought in respect of the penalty claimed, and also for the purpose of taking the Home Secretary's opinion whether he would remit the penalty. It was held that the judgment recovered was no bar to an action for the same offence by a different plaintiff. Of the three judges who heard the case in the Court of Appeal, one based his decision on the ground that the judgment had been recovered in an action in which the then defendants were in truth both plaintiff and defendants; another on the ground that the judgment had been obtained by covin and collusion; and the third on both these grounds (*Girdlestone v. Brighton Aquarium Co.* (1879), 4 Exch. 107; 15 Digest 760, 8178).

(*p*) Sunday Observance Act, 1780, s. 2; 4 Halsbury's Statutes 380.

(*q*) *Ibid.*, s. 1; 4 Halsbury's Statutes 379.

The expression "keeper" of a house and "person managing or conducting" an entertainment must be taken to include a limited company, but the directors are not liable as such. To make them liable, it is necessary to prove that they acted as persons having the management of the premises on the particular Sunday on which the offence was committed (r).

Where, however, boxing competitions were held in a place open for public entertainment on Sunday and an action was brought against various defendants for the recovery of penalties, it was held that the general manager of the company owning the place, although absent through illness on the day in question, but with knowledge of what the entertainment was to be and that any instructions which he sent would be carried out, was the "keeper"; and that a person who introduced the boxers in each contest, announced verdicts and future programmes was "master of the ceremonies" within sect. 1 of the Act and that they were liable to the penalties prescribed by the Act (s).

Where a hall belonging to a company in liquidation was let by the solicitor of the liquidator (who acted as agent of the liquidator and had obtained in his own name a music and dancing licence from the responsible authorities in respect of the premises) to a society formed for the purpose of giving lectures on Sunday evenings on art, science, literature and other subjects, the public being admitted on payment of small sums, it was held that although the jury found that on the occasion of a lecture, the hall was used for public entertainment or amusement within the meaning of sect. 1 of the Act, neither the solicitor nor the person who acted as chairman at one of the lectures came within the description of persons liable to penalties (t). [4]

Any person advertising or causing the advertisement of any public entertainment or amusement or any public meeting for debating on any subject whatsoever on Sunday to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement is liable to forfeit the sum of fifty pounds for every offence to any person suing for the same (u). A printing and publishing company which printed beforehand an announcement of a boxing contest to be held on Sunday has been held to be a person publishing an advertisement within the meaning of the Act although the advertisement had been published gratuitously merely as news (a).

In order to ascertain whether an advertisement is an infringement of the Act, what is to be looked at is the intention of the advertiser at the time of publication, and not what is in fact done afterwards. As the intention of the advertiser is, however, a question of fact, such intention may be proved if the wording of the advertisement is not conclusive, by any relevant evidence including what was in fact done afterwards (b).

The mere presence, however, of a printer's name on an advertisement of an entertainment which is an infringement of the Act is not in itself

(r) *Orpen v. Haymarket Capitol Limited and Others* (1931), 95 J. P. 199; Digest (Supp.).

(s) *Green v. Berliner*, [1936] 2 K. B. 477; [1936] 1 All E. R. 199; Digest (Supp.).

(t) *Reid v. Wilson and Ward*; *Reid v. Wilson and King*, [1895] 1 Q. B. 315; 15 Digest 760, 8177.

(u) Sunday Observance Act, 1780, s. 3; 4 Halsbury's Statutes 380.

(a) *Green v. Berliner*, [1936] 2 K. B. 477; Digest (Supp.).

(b) *Kitchener v. Evening Standard Co., Ltd.*, [1936] 1 K. B. 576; Digest (Supp.). See also *Williams v. Wright* (1897), 13 T. L. R. 551; 15 Digest 759, 8176.

sufficient evidence that the printer actually printed the advertisement (c).

There is a difference between persons advertising or causing an entertainment to be advertised and printers or publishers, and where it was found that the person sued as advertiser was only a printer or publisher, it was decided he could not be convicted (d). An advertisement of a place of amusement as distinct from an advertisement of an entertainment is no infringement of the Act. [5]

Any person entitled to any of the above-mentioned forfeitures may sue for the same by action of debt in the High Court, and it is "sufficient to declare that the defendant is indebted to the plaintiff in the sum of (being the sum demanded by the said action), being forfeited by an Act made in the twenty-first year of the reign of His Majesty King George the Third, intituled 'An Act for preventing certain abuses and profanations on the Lord's day, called Sunday'." The plaintiff if he recovers in any such action is entitled to his full costs (e). No action can be brought for any of the penalties imposed unless it is brought within six calendar months next after the offence is committed (f).

In any such action, the defendant may plead the general issue and if there is a verdict in his favour or the plaintiff discontinues his action, or is non-suited, or judgment is given against him, the defendant is entitled to such full and reasonable indemnity as to all costs, charges and expenses incurred in and about any action, suits or other legal proceeding as is taxed by the proper officer (g). It is lawful for the Crown to remit in whole or in part any penalty, fine or forfeiture imposed or recovered for any offence under the Act whether on indictment, information or summary conviction, or by action or any other process (h).

[6]

SUNDAY ENTERTAINMENTS ACT, 1932

Cinematograph Entertainments. *Power to Allow Exhibitions on Sunday.*—Notwithstanding anything in any enactment relating to Sunday observance, the authority (i) having power to grant licences under the Cinematograph Act, 1909 (k), may in areas to which sect. 1 of the Sunday Entertainments Act, 1932, is made applicable (k), allow places in those areas licensed to be opened and used on Sundays for the

(c) *Tarling v. Rome* (1936), 52 T. L. R. 220; Digest (Supp.); *Green v. Berliner*, [1936] 2 K. B. 477; [1936] 1 All E. R. 199; Digest (Supp.).

(d) *Green v. Kursaal (Southend-on-Sea) Estates, Ltd.*, [1937] 1 All E. R. 732; Digest (Supp.).

(e) Sunday Observance Act, 1780, s. 4; 4 Halsbury's Statutes 380.

(f) *Ibid.*, s. 5; *ibid.*, 381. An amendment of claim when six months had elapsed since the alleged offence was not allowed in *Green v. Kursall (Southend-on-Sea) Estates, Ltd.*, *supra*.

(g) *Ibid.*, s. 6; *ibid.*, as modified by Limitation of Actions and Costs Act, 1842, s. 2; 13 Halsbury's Statutes 460, which is repealed by Public Authorities Protection Act, 1893, s. 2, as to cases within that Act; see 26 Halsbury, 2nd ed., 289.

(h) Remission of Penalties Acts, 1859 and 1875; 4 Halsbury's Statutes 536, 687.

(i) The authority is the county council or county borough council, or the Lord Chamberlain where the premises are licensed by him; Cinematograph Act, 1909, ss. 2, 6, 7; 19 Halsbury's Statutes 352, 354. See title CINEMATOGRAPHS. These councils may delegate any of their functions with or without restrictions or conditions to justices sitting in petty sessions; *ibid.*, ss. 5, 6, or to a committee of themselves; L.G.A., 1933, s. 85; 26 Halsbury's Statutes 352. County councils may also delegate to district councils; L.G.A., 1933, s. 274; 26 Halsbury's Statutes 451.

(k) See *post*, p. 8.

purpose of cinematograph entertainments subject to such conditions (l) as the authority may think fit to impose (m). [7]

For the purpose of the Act "Cinematograph Entertainment" means the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus with or without mechanical reproduction of sound (n). [8]

Where a cinematograph entertainment is given at any place allowed under the Act to be opened and used on Sundays for that purpose, no person is guilty of an offence or subject to any penalty under the Sunday Observance Acts, 1625, 1677 and 1780, by reason of his having managed, conducted, assisted at or otherwise taken part in or attended or advertised such entertainment or by reason of his being the keeper of the place opened and used on Sunday for such entertainment (o).

No place, however, is allowed to be so opened and used unless among the conditions imposed by the authority there are included conditions for securing that no person will be employed by any employer on any Sunday in connection with a cinematograph entertainment or any other entertainment or exhibition given therewith who has been employed on each of the six previous days either by that employer in any occupation or by any other employer in connection with similar entertainments or exhibitions (p), and also conditions relating to the allocation of the profits received where the place is open on Sundays (q).

The last-mentioned condition must require that such sums as may be specified by the authority not exceeding the amount estimated by the authority as the amount of the profits which will be received from cinematograph entertainments given while the place is open on Sundays, and from any other entertainment or exhibition given with it and calculated by reference to such estimated profits or to such proportion of them as the authority think fit, will be paid as to a certain percentage known as the "prescribed percentage," if any, to the authority for transmission to a fund known as the "Cinematograph Fund," and as to the remainder to such persons as may be specified by the authority for the purpose of application to charitable objects. For the purpose of this condition, the profits are to be computed on such basis as the authority may direct (r), and "prescribed percentage" means such percentage not exceeding 5 per cent. as a Secretary of State may, if

(l) As to conditions, see title CINEMATOGRAPHS. It has been recommended by the Secretary of State that there should be included among the conditions to be imposed a condition that the grant of permission to open on Sundays would be liable to be withdrawn in the event of any contravention of the conditions subject to which cinemas are allowed by the licensing authority to be open on Sundays. See circular letter of H.O. dated September 20, 1932, and headed "Sunday Opening of Cinemas."

(m) Sunday Entertainments Act, 1932, s. 1; 25 Halsbury's Statutes 921.

(n) *Ibid.*, s. 5; *ibid.*, 925.

(o) *Ibid.*, ss. 4, 5; *ibid.*, 924, 925.

(p) *Ibid.*, s. 1 (1) (a); *ibid.*, 921.

(q) *Ibid.*, s. 1 (1) (b); *ibid.*, 924.

(r) *Ibid.*, s. 1 (1) (b). So far as payments for charitable objects are concerned, the Secretary of State has pointed out that it will be open to the licensing authority either to require all the payments to be made to some person responsible for the allocation of the profits to the various charities, or if the licensing authority desire to retain control over the distribution of the contributions they may themselves nominate, as the persons specified, the secretary or other officers of the charities to which they wish the cinemas to make their contributions, and may in this way apportion between the various charities which they wish to benefit the payments due from cinemas within their jurisdiction. See circular letter of H.O. dated September 20, 1932, headed "Sunday Opening of Cinemas."

he thinks fit prescribe by regulations made by him and laid before Parliament (s). This has been fixed by the Secretary of State at 5 per cent. (t). [9]

The "Cinematograph Fund" is established under the direction and control of the Privy Council and the sums paid to an authority for transmission to such fund must be transmitted at such times and in such manner as may be prescribed by a Secretary of State and laid before Parliament (u).

By the Cinematograph Fund Regulations, 1933, where the licensing authority is not the council of a county or county borough or a committee of any such council, the licensing authority must, as soon as may be after March 31, June 30, September 30 and December 31 in each year, transmit to the council of the county or county borough in which their area is situate, the amount of sums paid to them under the Act during the preceding three months for the purpose of being transmitted to the cinematograph fund together with a statement in a prescribed form showing how the amount in question is made up (a).

As soon as may be after the four dates above mentioned, the council of a county or county borough must transmit to the accounting officer of the privy council office any sums paid to them under the Act during the preceding three months for the purpose of being transmitted to the cinematograph fund, and any sums transmitted to them by any other licensing authority. Prescribed statements with regard to these amounts must also be submitted (b). Any such sums paid to the Lord Chamberlain must be similarly dealt with (c).

The sums standing to the credit of the cinematograph fund are subject to the deduction of expenses of administration to be applied by the privy council for the purpose of encouraging the use and development of the cinematograph as a means of entertainment or instruction. The accounts of the fund are to be kept in such form as may be directed by the Treasury, and an account showing the revenue and expenditure of the fund must be transmitted annually to the comptroller and auditor general who must certify and report upon the account, and the account and report are to be laid before Parliament (d). [10]

Contravention of Conditions.—In the event of a contravention of any condition subject to which a place was allowed to be opened and used on Sundays for the purposes of cinematograph entertainment, the person who held the licence under the Cinematograph Act, 1909, is liable on summary conviction to a fine not exceeding twenty pounds, and where he has failed to pay in accordance with the conditions any sum required to be paid to any authority or person, is liable to pay that sum as a debt to such authority or person (e). Such sum may, if it does not exceed fifty pounds, be recoverable summarily as a civil debt (e).

"Contravention" in relation to any condition includes a failure to comply with that condition (f).

(s) Sunday Entertainments Act, 1932, s. 5; 25 Halsbury's Statutes 925.

(t) Cinematograph Fund Regulations, 1933; S.R. & O., 1933, No. 110.

(u) Sunday Entertainments Act, 1932, s. 2 (1); 25 Halsbury's Statutes 923.

(a) Cinematograph Fund Regulations, 1933, para. 3.

(b) *Ibid.*, para. 4.

(c) *Ibid.*, para. 6.

(d) Sunday Entertainments Act, 1932, s. 2 (2), (3); 25 Halsbury's Statutes 923.

(e) *Ibid.*, s. 1 (4); *ibid.*

(f) *Ibid.*, s. 5; *ibid.*

Where any person is employed on a Sunday in a place allowed to be open and used on Sundays for the purpose of cinematograph entertainments, contrary to the conditions imposed, such employment will not be deemed a contravention of the conditions if it is proved either that the employment was solely due to an emergency caused by a mechanical breakdown or to the unavoidable absence of a skilled worker due to attend on that Sunday for whom no substitute could readily be obtained, and that the emergency was notified within twenty-four hours to the authority by whom the place is licensed under the Cinematograph Act, 1909, and the person employed contrary to the said conditions received a day's rest in lieu of that Sunday; or if it is proved that the person was employed contrary to the conditions only by reason of his having been employed on six days previous to that Sunday in connection with similar entertainments or exhibitions by an employer other than the employer who employed him on that Sunday, and that the last-mentioned employer had, after making due inquiry, reasonable ground for believing that he had not been so employed beforehand (*g*).

For the purpose of sect. 4 of the Cinematograph Act, 1909 (*h*), any conditions imposed under the Sunday Entertainments Act, 1932, are deemed conditions of the licence granted under the Act (*i*). [11]

Application of Sect. 1 of the Sunday Entertainments Act, 1932.—Sect. 1 of the Act extends to every area in which places licensed by the authority having power to grant licences under the Cinematograph Act, 1909, were within the period of twelve months ending on October 6, 1931, opened and used on Sundays for cinematograph entertainments in pursuance of arrangements purported to have been made with the authority; but if the arrangements related only to specific occasional entertainments, then unless and until the section is extended to that area by order laid before Parliament referred to below, the powers conferred by the section must not be exercised with respect to more than two Sundays in any year (*k*).

The section also applies to any borough or county district to which it may be extended by an order laid before Parliament and approved by a resolution passed by each House of Parliament (*l*). To obtain such extension of the section to their borough or district, the borough or district council must submit to the Secretary of State a draft order in the following terms: "In accordance with the provisions of the Sunday Entertainments Act, 1932, I one of His Majesty's Principal Secretaries of State hereby order that as from the date on

(*g*) Sunday Entertainments Act, 1932, s. 1 (3); 25 Halsbury's Statutes 922.

(*h*) 19 Halsbury's Statutes 353. S. 4 contains provisions as to power of entry by a constable or appointed officer on licensed or unlicensed premises in order to ascertain whether (*inter alia*) the conditions of the licence are being complied with. See title CINEMATOGRAPHS.

(*i*) Sunday Entertainments Act, 1932, s. 1 (2); 25 Halsbury's Statutes 922.

(*k*) *Ibid.*, s. 1 (5); *ibid.*, 923. The Secretary of State has stated that he is advised that the word "places" includes a single place, so that if in the area of any licensing authority one or more cinemas has been opened on Sundays during the specified period in pursuance of an arrangement purported to have been made with the licensing authority, the authority is empowered to allow cinemas within its areas to open on Sundays subject to the prescribed conditions. See circular letter of the H.O., dated September 20, 1932, headed "Sunday Opening of Cinemas."

(*l*) *Ibid.*, s. 1 (5); *ibid.* This procedure is open not only to those authorities in whose areas the Act confers no direct power to allow cinemas to open on Sundays, but also to those authorities in whose areas the power to allow Sunday opening is limited to two Sundays in the year; Circular letter of H.O., dated October 14, 1932.

which this order has been approved by resolutions passed by both Houses of Parliament, sect. 1 of the said Act shall extend to the borough (or urban district or rural district) of .” Before submitting such draft order, the council must publish by means of placards and advertisement in at least one newspaper circulating in the borough or district in two successive weeks a notice stating the terms of the draft order and the proposal of the council to submit it to the Secretary of State (m).

The procedure as to the submission of the draft order varies according to whether or not the area involved is a borough or an urban or rural district. An order, however, when approved, does not make any change in the licensing system for cinemas; the power to allow cinemas in the area to open on Sundays will continue to be vested in the authorities with licensing powers under the Cinematograph Act, 1909, and the local authority obtaining the order will not thereby obtain licensing powers unless they already possess them (n).

A draft order submitted to the Secretary of State must be laid by him before Parliament together with a copy of a certified statement or report (if any) submitted to him therewith (o). [12]

Procedure in Boroughs and Urban Districts.—The notice of proposal to submit a draft order published by a borough or U.D.C. must state that a public meeting of local government electors for the borough or urban district will be held on a day named, not less than fourteen nor more than twenty-eight days after the first advertisement of the notice for the purpose of considering the question of the submission of the draft order to the Secretary of State (p).

Such public meeting must be held in accordance with the notice, and in relation to such meeting and any poll and other proceeding subsequent to it, the provisions formerly contained in paragraphs 3 to 16 of the First Schedule of the Borough Funds Act, 1903 (q), are made applicable as if for reference to “the Bill” and “to the promoters of the Bill” there were substituted respectively references to “the Draft Order” and “the submission of the Draft Order” and as if for references to “the Minister of Health” there were substituted references to the “Secretary of State.” So much of the paragraphs as relates to separate resolutions in favour of the promotion of any part or parts of clause or clauses of the Bill do not apply (r).

The paragraphs in question require a public meeting to be called to consider the question and a poll in certain circumstances may be demanded. Regulations have been made by the Secretary of State relating to requisitions for poll and their withdrawal, the withdrawal of the draft order, notices relating to poll, appointment of office and persons for the purpose of the poll, the days and hours of poll, polling districts, polling places and stations, the provision of requisites for the purposes of poll, ballot boxes, marking of register, forms of voting

(m) Sunday Entertainments Act, 1932, Sched., para. 1; 25 Halsbury's Statutes 926. See also circular letter of H.O., dated October 14, 1932, which contains information on procedure and model forms.

(n) See circular letter of H.O., dated October 14, 1932, and title CINEMATOGRAPHS.

(o) 1932 Act, Sched., para. 7; 25 Halsbury's Statutes 926.

(p) *Ibid.*, Sched., para. 2; *ibid.*

(q) This Act was repealed by L.G.A., 1933, s. 307; Sched. XI., Part IV.; 26 Halsbury's Statutes 469, 530, and the procedure laid down therein is now contained in the Ninth Schedule of the Act of 1933; 26 Halsbury's Statutes 510.

(r) Sunday Entertainments Act, 1932; Sched., para. 3; 25 Halsbury's Statutes 926.

paper, directions for guidance of voters, presiding officers, declarations of secrecy, conduct of polls, declaration of the result of poll, retention of documents, publication of notices, misnomer and inaccurate description and rules for polls and prescribing forms to be used in connection therewith (s).

No draft order must be submitted to the Secretary of State by the council unless the result of the poll or decision of the meeting of local government electors, where final, is in favour of its submission (t).

Any draft order submitted to the Secretary of State must be accompanied by a statement of the result of the poll or decision of the meeting of electors, if final, certified by the mayor or chairman (u).

Expenses incurred by a council in connection with the holding of any meeting, poll or other proceeding under the Schedule of the Sunday Entertainments Act, 1932, are to be defrayed by the council out of the general rate (a). [13]

Procedure in Rural Districts.—The notice of proposal to submit a draft order published by a R.D.C. must state that an objection to the submission of the draft order may be made to them in writing by any local government elector for the district within a period specified in the notice, not being less than fourteen nor more than twenty-eight days after the first advertisement of the notice, and that if at the expiration of that period objections have been made and not withdrawn by at least one hundred electors or one-twentieth in number of such electors, whichever be the less, the council will cause to be held a local inquiry into the question of submitting the draft order to the Secretary of State, upon such date, not being less than seven days after the period above-mentioned, and at a time and place to be specified in the notice (b). Such inquiry must be held in public by a person appointed by the Secretary of State (c).

Any local government elector for the district is entitled to appear personally and be heard at such inquiry, subject to the right of the person holding the inquiry to conclude it when, in his opinion, he has received sufficient evidence to enable him to make a report.

After the conclusion of the inquiry the person holding it must report in writing to the council whether public opinion in the district appears

(s) Sunday Cinematograph Entertainments (Polls) Order, 1932, dated October 11, 1932, made by the Secretary of State, under the Borough Funds Act, 1903, as applied by the Sunday Entertainments Act, 1932; S.R. & O., 1932, No. 828. The Borough Funds Act, 1903, has been repealed by the L.G.A., 1933, s. 307, Sched. XI., Part IV., the First Schedule of the Act of 1903 being replaced by the Ninth Schedule of the Act of 1933, s. 307 (1); proviso (iv.) of s. 307 (1) of the Act of 1933 provides that nothing in the section shall affect any order, scheme or regulation made under any enactment repealed by the Act and every such order, scheme, rule or regulation shall continue in force and, if it is of such a nature that it could have been made under the Act, shall have effect as if made under the corresponding provision of the Act and may be amended, varied, repealed, revoked or enforced accordingly.

(t) Sunday Entertainments Act 1932, Sched., para. 6; 25 Halsbury's Statutes 926.

(u) *Ibid.* The H.O. have indicated that they will require in addition evidence that the necessary procedure has been complied with and that they consider it convenient to adopt a form of statutory declaration which it set out in the circular letter of the H.O., dated October 14, 1932.

(a) *Ibid.*, Sched., para. 9.

(b) *Ibid.*, Sched., para. 4.

(c) *Ibid.*, para. 5. It will therefore, be necessary for the Secretary of State to be consulted before the date of the inquiry is fixed, i.e. before the public notice is issued. See circular letter of H.O., dated October 14, 1932, as to submission to H.O. of draft of notice and as to fixing dates.

to be in favour of or against the extension of sect. 1 of the Act to the district.

Except where an inquiry is not required owing to an absence or insufficient number of objections, no draft order must be submitted to the Secretary of State by the council unless the person who held the inquiry has reported that public opinion in the district appears to be in favour of the extension of sect. 1 of the Act to the district.

Except where an inquiry is not required, any draft order submitted to the Secretary of State must be accompanied by the report of the person who held the inquiry and must be certified by him (d).

Expenses incurred by a council in connection with the holding of any meeting, inquiry or other proceeding under the Schedule of the Sunday Entertainments Act, 1932, are to be defrayed by the council out of the general rate (e). [14]

Musical Entertainments.—The power of any authority in any area to grant licences under any enactment for the regulation of places kept or ordinarily used for public dancing, singing, music or other public entertainments of the like kind includes power to grant such licences in respect only of musical entertainments on Sundays (f). The power to attach conditions to any such licence includes power to attach special conditions in respect of such entertainments on Sundays (g).

No person is guilty of an offence or subject to any penalty under the Sunday Observance Acts, 1625, 1677, 1780, by reason of his having managed, conducted, assisted at or otherwise taken part in, or attended or advertised any musical entertainment at any place licensed to be opened and used on Sundays for that purpose, or at any place (h) authorised by virtue of letters patent or royal charter to be kept or used for entertainments, or by reason of his being the keeper of any place open and used on Sundays for such purpose (i).

“Musical entertainment” for the purpose of the Act means a concert or similar entertainment consisting of the performance of music with or without singing or recitation (k). [15]

Museums and other Places.—No person is guilty of an offence or subject to any penalty under the Sunday Observance Acts, 1625, 1677 and 1780 (l), by reason of his having managed, conducted, assisted at or otherwise taken part in or attended or advertised any museum, picture gallery, zoological or botanical garden, aquarium, lecture or

(d) Sunday Entertainments Act, 1932, para. 6.

(e) *Ibid.*, para. 9.

(f) *Ibid.*, s. 3; 25 Halsbury's Statutes 924. See title MUSIC, SINGING AND DANCING. This section does not extend to areas where there is no licensing control over public music and dancing and the Sunday Observance Act, 1780, will, therefore, continue to apply to such areas with the exception of places authorised by letters patent or royal charter to be kept or used for entertainments. See circular letter of H.O., dated September 20, 1932, and headed “Public Musical Entertainments” and title MUSIC, SINGING AND DANCING.

(g) *Ibid.*

(h) *E.g.* Covent Garden, Drury Lane and the Royal Albert Hall.

(i) Sunday Entertainments Act, 1932, ss. 4 (b), 5; 25 Halsbury's Statutes 924, 925.

(k) *Ibid.*, s. 5. As is pointed out in the circular letter of H.O., dated September 20, 1932, and headed “Public Musical Entertainments,” the definition is such as to include anything in the nature of a variety entertainment.

(l) *Ibid.*, s. 5.

debate or by reason of his being the keeper of any such place used for such purposes on Sundays (*m*).

"Museum" for the purpose of the Act includes any place permanently used for the exhibition of sculpture, casts, models or other similar objects (*n*). [16]

(*m*) Sunday Entertainments Act, 1932 ss. 4 (c), (d), 5.

(*n*) *Ibid.*, s. 5.

SUNDAY OBSERVANCE

See SHOPS; SUNDAY ENTERTAINMENTS.

SUPERANNUATION

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THE LOCAL GOVERNMENT SUPERANNUATION ACT, 1937

Introduction.—The L.G. Superannuation Act, 1937 (*a*), provides for the compulsory superannuation of all whole-time officers of local authorities in England and Wales, other than those covered by enactments relating to particular classes such as firemen (*b*), mental hospital employees (*c*), police (*d*), and teachers (*e*). Speaking generally, employees other than whole-time officers are not compulsorily superannuable under the Act of 1937, except where earlier rights subsist,

(*a*) 30 Halsbury's Statutes 385.

(*b*) See title FIREMEN, Vol. 6, and FIRE PROTECTION, Vol. 15.

(*c*) See *post*, p. 25.

(*d*) See title POLICE PENSIONS.

(*e*) See *post*, p. 29.

but they may be brought within the scope of statutory provisions by the action of an authority possessing discretionary powers. The Act of 1937 repealed the L.G. and Other Officers' Superannuation Act, 1922 (*f*), as from April 1, 1939, and re-enacted its provisions with modifications designed to remedy anomalies, simplify the procedure for applying superannuation to servants, and assimilate diverse provisions. A "local authority" includes the council of a county, county borough, metropolitan borough or county district, the Common Council of the City of London, and any other local authority within the meaning of the Local Loans Act, 1875 (*g*) and various joint committees (*h*). [17]

Classification of Authorities.—An "administering authority" is one required to maintain a superannuation fund, and, subject to certain exceptions (*i*), includes the council of every county, county borough and metropolitan borough, of every county district having one hundred or more contributory employees, every joint committee established by a combination scheme, and every other local authority as respects whom the Act of 1922 was in force before April 1, 1939 (*j*). A "local act authority" is one who, not having adopted the Act of 1922, maintains a superannuation fund under a local Act. An "employing authority" is a local authority or other body having a contributory employee in their service, and includes a local authority who are not an administering authority (*k*). [18]

Classification of Employees.—A "contributory employee" is a person for the time being entitled to participate in the benefits of a superannuation fund by virtue of inclusion in any one of seven specified categories (*l*); a local authority must take into consideration the superannuation position of an employee upon entry into employment, notify the employee of the result and accompany the notification with a statement setting out, *inter alia*, the rate of contribution payable and particulars of previous service (*m*). A "temporary" whole-time officer may become a contributory employee immediately on entry into the service of a local authority or after two years' not necessarily continuous service (*n*). A "designated employee" is one to whom the Act of 1922 applied; an "officer" is an employee whose duties are

(*f*) 10 Halsbury's Statutes 863.

(*g*) S. 34; 12 Halsbury's Statutes 253, provides, *inter alia*, that "local authority" means various specified bodies, "also any authority whatsoever having power to levy a rate." "Rate" is also widely defined, and includes any sum obtained in the first instance by a precept. For the purpose of M. of H. decision No. 67, the Metropolitan Water Board was regarded as a "local authority," but, for the purpose of No. 77, not the Port of London Authority.

(*h*) L.G. Superannuation Act, 1937, s. 40; 30 Halsbury's Statutes, 417.

(*i*) *Ibid.*, s. 1 (2); *ibid.*, 387; exceptions are a local authority who have not adopted the Act of 1922 and maintain a fund under a local Act, or constituent authority under a combination scheme, or a local authority admitted to the scheme of another under s. 5 (3) of the Act of 1922; 10 Halsbury's Statutes 865.

(*j*) *Ibid.*, s. 4 (3); *ibid.*, 391; the M. of H. may order the transfer of a superannuation fund to another authority in the event of the number of contributory employees of the council of a county district falling below one hundred.

(*k*) Relations and financial arrangements between an administering and an employing authority are governed by L.G. Superannuation (Administration) Regulations, 1939; S.R. & O., No. 330.

(*l*) L.G. Superannuation Act, 1937, s. 3 (2); 30 Halsbury's Statutes 389; and observe exclusions and proviso to s. 3 (4).

(*m*) L.G. Superannuation (Administration) Regulations, 1939; S.R. & O., 1938, No. 330.

(*n*) L.G. Superannuation Act, 1937, s. 30; 30 Halsbury's Statutes 410.

wholly or mainly administrative, professional or clerical (*o*) or whose annual remuneration exceeds £250 and who is not an employed contributor within the National Health Insurance Act, 1936; a "servant" is an employee (excluding a person whose employment is of a casual nature) other than an officer (*p*); a "whole-time officer" is one who devotes substantially the whole of his time to one or more local authorities (*q*). [19]

Special Classes of Employees.—Special classes of employees are subject to modified provisions (*r*). A holder of a joint appointment who has either attained fifty years of age or completed twenty years' service is entitled to a superannuation allowance in the event of cessation of service of the other joint holder, except where misconduct of a spouse has occurred. Modified provisions (*s*) are, mainly relating to lower percentage rates of contribution varying with length of service, are applicable to a transferred poor law or rating employee (*t*), whether subject to the Poor Law Officers' Superannuation Act, 1896 (*u*), to the Act of 1922, or to a local Act scheme, immediately before April 1, 1939, or who, provided contributions previously refunded are returned by the employee, enters the service of a local authority after April 1, 1939. A female nurse, midwife or health visitor retires compulsorily at sixty instead of the generally applicable age of sixty-five years, but such employees as were in service on April 1, 1939, are subject to that provision only if a statutory option to that effect has been exercised, retirement is permissive at age fifty-five on completion of thirty years' service; age fifty is the normal maximum for commencement as a contributory employee, an exception being a midwife first employed pursuant to the Midwives Act, 1936 (*a*), during the three years to July 30, 1939; an additional compensatory allowance may be granted if forty years' service has not been completed at age sixty. An ex-teacher who is a contributory employee, may, in certain circumstances, count recognised contributory service under the Teachers (Superannuation) Acts, 1918 to 1939 (*b*). An employee of managers of a non-provided school who is brought within superannuation by a resolution of a local authority is to be regarded as an employee of the latter except with respect to extension of service after age sixty-five. A registration

(*o*) Among decisions of the M. of H. the following were held to be "officers": a pier master (No. 11), an assistant engineer in an electricity department (No. 18), an electricity mains records assistant (No. 19), meter superintendent (No. 21), a manager of public baths (No. 33), an electricity meter reader and prepayment collector (No. 34), a chief inspector in a transport undertaking (No. 42), a junior inspector of a catchment board (No. 46), and a probationer nurse (No. 65).

(*p*) Among decisions of the M. of H. the following were held to be "servants": a sewage works manager (No. 8), electricity meter tester (No. 20), cook at a hospital (No. 44), head porter at a hospital (No. 45), and an ambulance driver (No. 53).

(*q*) L.G. Superannuation Act, 1937, s. 40; 30 Halsbury's Statutes 415; under M. of H. decision No. 88, it was held that a council school correspondent who devoted forty out of fifty hours per week to the work of a local authority was not a "whole-time officer."

(*r*) *Ibid.*, ss. 14 to 20, and ss. 27 and 28; *ibid.*, 401—403, 409, 410.

(*s*) L.G. Superannuation Act, 1937, s. 15, 2nd Sched., Pt. I.; 30 Halsbury's Statutes 420.

(*t*) *Ibid.*, s. 40, defines both classes of employee, and includes a registration officer, also separately defined; 30 Halsbury's Statutes 416, 417.

(*u*) 12 Halsbury's Statutes 949.

(*a*) 29 Halsbury's Statutes 264.

(*b*) Acts of 1918, 1922, 1924, 1925; 7 Halsbury's Statutes 308, 314, 316, 317; (1935) 28 Halsbury's Statutes 49; (1937) 30 Halsbury's Statutes 180; (1939) 32 Halsbury's Statutes 1181.

officer (c) is subject to special provisions (d) with regard to reckoning of service. A mental hospital employee (e) may count service and contributions under the Asylums Officers' Superannuation Act, 1909 (f) for the purposes of the Act of 1937, and *vice versa*; consequential provision is made by the Act of 1937 and regulations with regard to matters such as payment of a transfer value and apportionment of pension (g). [20]

Clerks of County Councils and of the Peace.—Every clerk of the peace and county council appointed before July 31, 1931 (date of passing of the L.G. (Clerks) Act, 1931) (h), continues to enjoy superannuation rights conferred by sect. 9 (2) of the Act of 1931 with the additional right of allocating part of a superannuation allowance to a spouse under sect. 9 of the L.G. Superannuation Act, 1937 (i). The Act of 1931 entitles these officers to a pension of one-sixtieth of a five-year average of salary and emoluments for each year of service, but no contributions are payable by the officer (k). Every clerk of a county council, other than a local Act authority, appointed after July 31, 1931, is subject to the Act of 1937, as modified; modifications relate to vacation of office at age sixty-five under sect. 100 (3) of the L.G.A., 1933 (l) (instead of compulsory retirement under sect. 7 of the Act of 1937) (m), inclusion of salary as clerk of the peace in pensionable remuneration, and contributions and service under L.G. (Clerks) Act, 1931, count under Act of 1937; non-contributing service ranks for pension purposes (n). A deputy clerk of the peace who is also a contributory employee of a county council must make contributions and is entitled to a pension on the combined remuneration of the two offices; provision is made against the separate cessation of either office (o). [21]

Clerks and Assistant Clerks to Justices (p).—A whole-time clerk to justices (q) is deemed to be a contributory employee of the county council, or of the borough council, as the case may require (r), unless the council are a local act authority. An employee of a clerk to justices, *supra*, who devotes substantially the whole of his time to functions

(c) L.G. Superannuation Act, 1937, s. 40; 30 Halsbury's Statutes.

(d) *Ibid.*, s. 27 and 2nd Sched., Pt. IV.; *ibid.*, 409, 427. Also see L.G. Superannuation (Service of Registration Officers) Regulations, 1939; S.R. & O., No. 57.

(e) *Ibid.*, s. 40; *ibid.*, 417.

(f) 11 Halsbury's Statutes 152.

(g) L.G. Superannuation Act, 1937, s. 28, and 2nd Sched., Pt. V.; 30 Halsbury's Statutes, 410, 427.

(h) 24 Halsbury's Statutes 240.

(i) 30 Halsbury's Statutes 396.

(k) L.G. Superannuation Act, 1937, s. 19, and 2nd Sched., Pt. II., para. A; 30 Halsbury's Statutes 403, 424.

(l) 26 Halsbury's Statutes 359.

(m) 30 Halsbury's Statutes 394.

(n) L.G. Superannuation Act, 1937, 2nd Sched., Pt. II., para. B; 30 Halsbury's Statutes 424.

(o) *Ibid.*, para. C; *ibid.*, 425.

(p) While this volume was in preparation a Departmental Committee was appointed by the Home Secretary to inquire into conditions of service, including superannuation (A.M.C. Review, 1938, p. 178).

(q) L.G. Superannuation Act, 1937, s. 20 (4); 30 Halsbury's Statutes 404: "whole-time justices' clerk" is defined as one who devotes substantially the whole of his time either to the duties of one or more clerkships to justices or partly to such duties and partly to duties under one or more local authorities.

(r) *Ibid.*, s. 20 (1), proviso; *ibid.*, 403, gave a justices' clerk holding office on April 1, 1939, an option to remain outside superannuation.

appertaining to the clerkship is deemed to be a contributory employee of the same council. Modifications applicable to clerks and their employees include the vesting power in justices to extend the service of their clerk beyond the age of sixty-five, and in the clerk, with the consent of the justices, as regards an employee of the clerk; substitution of justices for local authority in connection with increase of pension above the statutory minimum; definition of "remuneration"; apportionment of remuneration of an employee of a clerk between two or more clerkships; charging on a county or borough fund of sums not payable out of the superannuation fund; reckoning of service; in the case of a clerk or employee subject to the Act of 1922 before April 1, 1939, contributions to be 5 per cent. of remuneration, previous contributing service to count, and further modifications may be made by order of the Secretary of State (s). [22]

Contributions.—A contributory employee not excepted from liability (t) contributes 5 per cent. of his remuneration (u) if he is an officer who was a designated employee, 6 per cent. if not (*i.e.* became a contributory employee on or after April 1, 1939) and 5 per cent. if a servant (a). The employing authority make an equivalent contribution, together with other sums required to be paid into the superannuation fund (*q.v.*). Contributions of an employee are ordinarily deducted (b) from remuneration payable to him by an employing authority but may be recovered by the appropriate administering authority as a simple contract debt, or be deducted from a superannuation allowance (c). An additional contributory payment (d) may be made by an employee in order to increase the fractional calculation for pension purposes above the statutory minimum of one one-hundred-and-twentieth for each year of service, and for certain other purposes. Where a contributory employee receives remuneration otherwise than from the employing authority a half-yearly statement of receipts, accompanied by a statutory declaration, must be rendered to the authority (e). An employee may base his contributions on the amount of remuneration receivable prior to a reduction (f). A refund of contributions without interest must be made in the event of a voluntary resignation, or resignation or dismissal in consequence of inefficiency, provided no transfer value is payable; special provision is made where employment ceases in consequence of an offence of a fraudulent

(s) L.G. Superannuation Act, 1937, s. 20 and 2nd Sched., Pt. III.; 30 Halsbury's Statutes 403, 426.

(t) *Ibid.*, exception in s. 3 (1) and proviso to s. 6 (1); *ibid.*, 389, 392. No contributions are payable by a contributory employee who has attained the age of sixty-five years, or who was exempt from liability to contribute under the Act of 1922.

(u) *Ibid.*, s. 40 defines; 30 Halsbury's Statutes 417.

(a) *Ibid.*, s. 6 (1); *ibid.*, 392. See note (p), *ante*, p. 14, as to definition of servant.

(b) It seems that failure of an "employing authority" to deduct contributions is unlikely to prejudice an employee's superannuation rights. The full extent of the authority's power to recover subsequently remains to be decided, but see *Tees Conservancy Comrs. v. James and Others* (1935), 99 J. P. 149; Digest (Supp.) decided on a different Act. Incomplete deductions do not bar a superannuation allowance, *e.g.* *Gissing v. Liverpool Corpn.* (1935), 98 J. P. 359; Digest (Supp.).

(c) *Ibid.*, s. 6 (3); 30 Halsbury's Statutes 393.

(d) *Ibid.*, s. 40 and s. 8 (2), para. (b), proviso (ii.); *ibid.*, 395, 416. Amount and time of payment in accordance with Regulations, S.R. & O., 1939, No. 52.

(e) *Ibid.*, s. 6 (4); *ibid.*, 393. The Controller of Stamps (Adjudication Branch), Inland Revenue, stated in a letter, dated July 13, 1938, to the Association of Superannuation Committees, that, for reasons given, this statutory declaration is not liable to duty.

(f) *Ibid.*, s. 6 (5); *ibid.*

character or misconduct (g), and in the former case payment may be made to a wife or family. Interest at the rate of 3 per cent. per annum with half-yearly rests is payable on an amount refunded where an employee dies whilst in service, or on a balance of contributions after deducting superannuation allowance paid, or deemed to have been paid to date of death (h). [23]

Service.—Broad definition, subject to exceptions, is that rendered to any local authority after attaining the age of eighteen years and before attaining the age of sixty-five years (i), and may be contributing or non-contributing. A disqualifying break is a continuous period of twelve months or longer during which a person was not a contributory employee or local act contributor, or subject to the Act of 1922. Contributing service is that in respect of which contributions, or payments with like effect have been made, and not refunded, under the Act of 1922 or 1937 (j), or, in the case of a transferred poor law or rating employee, under the Poor Law Officers' Superannuation Act, 1896 (k), as well as the Act of 1922 (l). Non-contributing service is all that not ranking as contributing (m). War service with H.M. Forces and otherwise may rank (n); service in respect of which a payment-in-lieu-of transfer value under the Act of 1922 had been partly made before April 1, 1939, is taken into account in accordance with rules made by the M. of H. (o); earlier part-time employment of a whole-time employee is commuted to whole-time by a proportionate reduction (p); indirect employment for not less than three continuous years by an officer of a local authority may rank as non-contributing service (q). Provision is made in connection with re-employment by the same or another local authority within twelve months of ceasing to be a contributory employee (r). In the case of employees of a statutory undertaker or voluntary organisation admitted by an administering authority, service would rank as contributing from date of admission, and non-contributing service would ordinarily be that with the undertaker or organisation prior to the date mentioned, together with earlier service with any other local authority as defined. Service during re-employment after grant of a pension may rank in certain circumstances (s). [24]

Transfer.—If a contributory employee or local act contributor enters a similar category under another local authority within twelve months of ceasing to be so employed, a transfer value, calculated in

(g) Meaning of misconduct was exemplified in *Poad v. Scarborough Union*, [1914] 3 K. B. 959; 78 J. P. 465; 37 Digest 214, 102; C.A.

(h) L.G. Superannuation Act, 1937, s. 10; 30 Halsbury's Statutes 396.

(i) *Ibid.*, s. 40; *ibid.*, 417. M. of H. decision No. 4 disallowed a period under an indenture of apprenticeship and under decision No. 82 refused the claim of an article pupil to be treated as a contributory employee. Previous service in Northern Ireland was disallowed under decision No. 5, and with a municipal board in British East Africa under decision No. 7.

(j) *Ibid.*, s. 12 (1). (k) 12 Halsbury's Statutes 949.

(l) 1937 Act, 2nd Sched., Pt. I, para. 3 (a); 30 Halsbury's Statutes 421.

(m) *Ibid.*, s. 12 (2); *ibid.*, 399.

(n) *Ibid.*, s. 12 (3); *ibid.*, and L.G. Staffs (War Service) Act, 1939; 32 Halsbury's Statutes 1118. In circular 1994, dated April 17, 1940, the Minister of Health intimated his preparedness to recognise as "war service" employment of a transferred employee of a local authority on armament production, including the building and repair of ships, during the period of the emergency.

(o) *Ibid.*, s. 12 (4); *ibid.*, 400, and S.R. & O., 1939, No. 54.

(p) *Ibid.*, 2nd Sched., Pt. I, para. 3 (b); *ibid.*, 422, does not apply to a transferred poor law or rating employee.

(q) *Ibid.*, s. 12 (6); *ibid.*, 400. (r) *Ibid.*, s. 13; *ibid.*

(s) L.G. Superannuation (Reduction and Adjustment of Superannuation Allowance) Regulations, 1939; S. R. & O., No. 53.

the prescribed manner (*t*), has to be paid by the first authority (*u*), and the employee's superannuation rights, including contributions made by him, are regarded as transferred to the later authority (*a*). Naturally, no transfer value is payable where both local authorities concerned are members of the same superannuation fund, *e.g.* a county district council joined with the county council through not having more than one hundred contributory employees, or where two or more authorities have combined for superannuation purposes. A transfer value is also payable in the event of a change from one whole-time to part-time employment under the same and another local authority (*b*). Information to be exchanged between local authorities in respect of employees transferring has been prescribed by regulations of the Minister of Health (*c*). The following table outlines the position where persons in permanent whole-time employment subject or becoming subject to certain other superannuation provisions enter or leave similar employment subject to the Act of 1937 (*d*); it is assumed that there is no disqualifying break in service, *i.e.* that service in the respective employments is continuous, or regarded as such. [25]

Description of Employment and related superannuation provision.

ENTERING employment under L.G. Superannuation Act, 1937, FROM that described in column (1).

LEAVING employment under L.G. Superannuation Act, 1937, and GOING to that described in column (1).

(1)

(2)

(3)

Central Electricity Board and Joint Electricity Authority.—Electricity (Supply) Acts, 1919 and 1926 (e).

If Part I. of the L.G. Superannuation Act, 1937, has been applied by sect. 34 (1) or has been adopted following sect. 34 (2) of that Act (*f*), position is similar to that normally arising in the case of an employee of a local authority.

If a modified scheme is in force under sect. 34 (3) of the Act of 1937 (*f*), position is dependent upon provision in that scheme.

Certified Institution (g).—Asylums Officers' Superannuation Act, 1909 (h), as modified and applied by the Asylums and Certified Institutions (Officers' Pensions) Act, 1918 (i).

Act of 1937 (*k*) applies and account taken of previous service in the prescribed manner (*l*); sum calculated in prescribed manner (*l*) payable by institution body towards pension when paid by local authority; contributions returnable by "bodies concerned" in the event of voluntary resignation, *et seq.* (*m*).

Act of 1909 (as modified) applies and account taken of previous service in the prescribed manner (*l*); transfer value ascertained in prescribed manner (*l*) payable by local authority to institution body; whole of contributions returnable by institution body in the event of voluntary resignation, *et seq.* (*m*).

(*t*) L.G. Superannuation (Transfer Value) Regulations, 1939; S.R. & O., No. 329, which accompanied M. of H. circular 1795 S/Z3, dated March 27, 1939.

(*u*) L.G. Superannuation Act, 1937, s. 29 (1); 30 Halsbury's Statutes 410.

(*a*) *Ibid.*, s. 13 (1), proviso; *ibid.*, 400; by implication, repayment by the employee of contributions refunded by an earlier authority would be a condition precedent to resumption of rights.

(*b*) *Ibid.*, s. 29 (2); *ibid.*, 410.

(*c*) L.G. Superannuation (Administration) Regulations, 1939; S.R. & O., No. 330.

(*d*) 30 Halsbury's Statutes 385.

(*e*) 7 Halsbury's Statutes 754, 792.

(*f*) 30 Halsbury's Statutes 413.

(*g*) A certified institution provided by a local authority under the Mental Deficiency Act, 1913; 11 Halsbury's Statutes 160.

(*h*) 11 Halsbury's Statutes 152.

(*i*) 11 Halsbury's Statutes 197.

(*k*) L.G. Superannuation Act, 1939, s. 2; 32 Halsbury's Statutes 248, provides the continued application of the Act of 1937 to certain employees of certified institutions who would otherwise be subject to the Acts of 1909 and 1918; 11 Halsbury's Statutes 152, 197.

(*l*) L.G. Superannuation (Mental Hospital, etc., Employment) Regulations, 1939; S.R. & O., No. 56.

(*m*) L.G. Superannuation Act, 1937, s. 28, 2nd Sched., Pt. V., para. 2 (1) (*c*); 30 Halsbury's Statutes 410, 428.

Description of Employment and related superannuation provision.

ENTERING employment under L.G. Superannuation Act, 1937, FROM that described in column (1).

LEAVING employment under L.G. Superannuation Act, 1937, and GOING to that described in column (1).

(1)

(2)

(3)

Civil Service. — (a) Generally: Superannuation Acts, 1834 to 1935 (n).

Subject to specific direction of H.M. Treasury in relation to local authority Act of 1937 applies and account taken of previous service for that part of pension payable by H.M. Treasury when office under local authority ceases (o).

Subject to specific direction of H.M. Treasury in relation to local authority Civil Service Superannuation Acts apply and account taken of previous service for that part of pension payable by local authority when office in Civil Service ceases, provided contributions not refunded to employee (o).

(b) Unemployment Assistance Board: Unemployment Act, 1934 (p), and Superannuation Acts, 1834 to 1935 (n) (as to Assistance Board, see following) (q).

Subject to specific direction of H.M. Treasury, in relation to local authority, Act of 1937 applies and account taken of previous service for that part of pension payable by H.M. Treasury when office under local authority ceases (r).

Civil Service Superannuation Acts apply and account taken of previous service for that part of pension payable by local authority when office under Unemployment Assistance Board ceases, provided contributions not refunded to employee (r).

(c) Assistance Board: in place of Unemployment Assistance Board as from March 21, 1940, under the Old Age and Widows' Pensions Act, 1940 (q).

As at (a) above.

Rules to be made by H.M. Treasury under sect. 18 of the Act of 1940 (q), *vide* col. (1), will apparently provide as at (a) above, but, by sect. 18, need for "direction of Treasury in relation to local authority" was discontinued.

(d) Veterinary Inspectors: Agriculture Act, 1937 (s), and Superannuation Acts, 1834 to 1935 (n).

Special provision was made by sect. 26 of the Agriculture Act, 1937 (s), in respect of veterinary inspectors transferred on April 1, 1938, from local authorities to the civil service under the Act mentioned, and the Local Government and Civil Service (Superannuation) Rules, 1936, were applied with modifications providing, *inter alia*, for the subsequent passage of the L.G. Superannuation Act, 1937; on retirement of an inspector from the civil service, a pension is payable by the transferor local authority based on local government service and pensionable emoluments. Apart from the foregoing transfers, the position is as at (a) generally, *supra*, in the case of veterinary inspectors entering the local government service from the civil service or *vice versa*.

(n) Acts of 1834, 1859, 1860, 1866, 1876, 1884, 1887, 1892, 1909, 1914; 16 Halsbury's Statutes 122, 179, 186, 238, 378, 551, 566, 686, 741, 778; Act of 1919; 13 Halsbury's Statutes 374; Act of 1935; 28 Halsbury's Statutes 295.

(o) Superannuation Act, 1935, s. 9; 28 Halsbury's Statutes 302, if the Treasury, upon the application of the local authority, have so directed (sub-s. (5)), then L.G. and Civil Service (Superannuation) Rules, 1936; S.R. & O., No. 651, apply. Also, see L.G. Superannuation Act, 1937, s. 41 (2); 30 Halsbury's Statutes 419.

(p) 27 Halsbury's Statutes 756.

(q) Old Age and Widows' Pensions Act, 1940 (3 & 4 Geo. 6, c. 13), s. 18, proviso, protects the rights of a person entering the service of the Assistance Board, which would include that of the Unemployment Assistance Board, before the date of rules made by the Treasury under s. 18.

(r) Superannuation Act, 1935, s. 9 (2) (b) proviso; 28 Halsbury's Statutes 302, and L.G. Superannuation Act, 1937, s. 41 (2); 30 Halsbury's Statutes 419, continue the application of the Unemployment Assistance Board (Superannuation) Rules, 1935; S.R. & O., No. 592, to a local government employee becoming an employee of the U.A.B.; *vice versa*, 1936 rules (No. 651) apply.

(s) 30 Halsbury's Statutes 64.

Description of Employment and related superannuation provision.

(1)

Clergy.—Clergy Pensions Measures, 1926 to 1936 (*f*).

Local Act.

Mental Hospital.—Asylums Officers' Superannuation Act, 1909 (*f*).

Nurse, Female.—Federated Superannuation Scheme for Nurses and Hospital Officers.

Police.—Police Pensions Act, 1921 (*h*).

ENTERING employment under L.G. Superannuation Act, 1937, FROM that described in column (1).

(2)

The measures mentioned in column (1) continue to apply if the employee holds a defined (*u*) office in the Church, or is one to whom the measures have been applied (*a*) by the Pensions Authority nominated by the Church Assembly.

Transfer value calculated in the prescribed manner (*c*) is payable by the local Act Authority, previous service is reckonable in the normal manner under sect. 12 of the Act of 1937 (*d*), and all the employees' contributions are regarded as transferred with him.

Identical in principle with position as set out under "Certified Institution" at p. 18, *ante* (*g*).

Contributions under Federated Scheme not returnable; contributions may be continued, or "single premium" policy taken out with total contributions. Reckonable service under Act of 1937 commences on date of entry into employment of local authority.

Police authority return rateable deductions from pay. It would seem from the comprehensive definition of "local authority" that previous service in a police force would be reckoned under the Act of 1937, but in practice appears to be regarded as service under the Crown.

LEAVING employment under L.G. Superannuation Act, 1937, and GOING to that described in column (1).

(3)

Contributions under Act of 1937 returnable to the employee, and measures named in column (1) would apply subject to latter condition stated in column (2). According to circumstances, service under local authority may rank for pension under clergy scheme (*b*).

Transfer value calculated in the prescribed manner (*c*) is payable by the administering authority, previous service is reckonable in accordance with the provisions of the local Act and modifying scheme (*e*), and the employee's contributions are ordinarily regarded as transferred with him.

Identical in principle with position as set out under "Certified Institution" at p. 18, *ante* (*g*).

Contributions returnable to employee and rights lapse under Act of 1937. Federated Scheme may be joined if service of a "participating institution" is entered.

Contributions returnable to employee and rights lapse. Previous service under Act of 1937 will not rank under Police Pensions Act, 1921 (*h*).

(*t*) 6 Halsbury's Statutes 261; 29 Halsbury's Statutes 92.

(*u*) Clergy Pensions Measure, 1926, s. 1; 6 Halsbury's Statutes 261.

(*a*) *Ibid.*, s. 1 (3); 6 Halsbury's Statutes 262.

(*b*) *Ibid.*, s. 3; 6 Halsbury's Statutes 263.

(*c*) *Vide* note (*t*), p. 18.

(*d*) 30 Halsbury's Statutes 399.

(*e*) M. of H. Circular 1663/S4, dated December 30, 1937, and appendix discussed various aspects of modifying schemes made under s. 26 (*i*) of the L.G. Superannuation Act, 1937, and a model scheme outlining common provisions was annexed.

(*f*) 11 Halsbury's Statutes 152.

(*g*) L.G. Superannuation Act, 1937, s. 40; 30 Halsbury's Statutes 417, definition of "mental hospital employee" includes an employee in a certified institution, and single provision is made with regard to both kinds of employee in s. 28 and 2nd Sched., Pt. V.; 30 Halsbury's Statutes 410, 427.

(*h*) 12 Halsbury's Statutes 873.

Description of Employment and related superannuation provision.

ENTERING employment under L.G. Superannuation Act, 1937, FROM that described in column (1).

LEAVING employment under L.G. Superannuation Act, 1937, and GOING to that described in column (1).

(1)

(2)

(3)

Scottish Local Government.—L.G. Superannuation (Scotland) Act, 1937 (i), and L.G. Superannuation Act, 1937 (k).

Pursuant to regulations (l) made by the Secretary of State and the Minister of Health, a transfer value is payable by the Scottish administering authority, previous service is reckonable, and contributions made by the employee are regarded as transferred.

Pursuant to regulations (l) made by the Secretary of State and the Minister of Health, a transfer value is payable by the English (or Welsh) administering authority, previous service is reckonable, and contributions made by the employee are regarded as transferred.

Teachers.—Teachers (Superannuation) Acts, 1918 to 1939 (m).

Recognised or contributory service under the Teachers (Superannuation) Acts may count as contributing or non-contributing, subject to various conditions (n).

Contributions returnable to employee and rights lapse. Previous service under Act of 1937 will not rank under the Teachers (Superannuation) Acts.

[26]

Retirement.—In the majority of cases, a contributory employee must retire on attaining sixty-five years of age, subject to extension of service by an employing authority for a period not exceeding one year and further periods similarly limited (o); service during such an extension cannot be reckoned (p). A female nurse, midwife, or health visitor must retire at sixty years of age, unless, having been subject to the Act of 1937 at April 1, 1939, she did not exercise an option to come under provisions for that earlier retirement (a). A contributory employee may, however, retire on pension (i.) on account of physical or mental infirmity after ten years' service, or (ii.) at sixty years of age if forty years' service has been completed (b), with the substitution in the latter case of fifty-five years of age and thirty years' service in the case of a female nurse, midwife, or health visitor who did not exercise the option, *supra* (c). [27]

Pension.—A contributory employee is entitled to a pension (i.) after completion of ten years' service and physical or mental incapacity, (ii.) after completion of forty years' service and attainment of sixty years of age, (iii.) after completion of ten years' service and attainment of sixty-five years of age (d). Pension in respect of each year of contributing service is at the rate of one-sixtieth of an annual average of five years' remuneration (e), and in respect of non-contributing service

(i) 1 Edw. 8 & 1 Geo. 6, c. 69. (k) 30 Halsbury's Statutes 385.

(l) L.G. Superannuation Act, 1937, s. 38; 30 Halsbury's Statutes 415, and L.G. Superannuation (Scotland) Act, 1937, s. 36, and L.G. Superannuation (England and Scotland) Regulations, 1939; P. and S.R. & O., No. 283.

(m) 7 Halsbury's Statutes 303; 32 Halsbury's Statutes 1131.

(n) *Ibid.*, s. 17, and L.G. Superannuation (Teachers) Regulations, 1939; P.R. & O. in force from March 11, 1939.

(o) *Ibid.*, s. 7 (1); 30 Halsbury's Statutes 394.

(p) *Ibid.*, s. 7 (3); *ibid.*, 394.

(a) *Ibid.*, s. 16 (1); *ibid.*, 401. (b) *Ibid.*, s. 8 (1) (a) and (b); *ibid.*, 394.

(c) *Ibid.*, s. 16 (1) (a); *ibid.*, 401. (d) *Ibid.*, s. 8 (1); *ibid.*, 394.

(e) *Ibid.*, s. 8 (5); *ibid.*, 395. Ordinarily, the annual average of the remuneration received by an employee in respect of service rendered during the five years immediately preceding the day on which employment ceases, or the day on which the age of sixty-five years is attained. Provision is made for calculation on the basis of full remuneration where reduction or suspension has occurred, and for an apportionment of remuneration to two or more part-time employments.

is at the rate of one one-hundred-and-twentieth of average remuneration, subject in the latter case to an increase up to a maximum of one-sixtieth at the discretion of the employing authority, or in the event of an employee having made an additional payment (f). Total pension must not exceed two-thirds of the employee's average remuneration (g), any increase of pension beyond statutory entitlement must not be charged on the superannuation fund, and pension payments are to be made at intervals, not exceeding three months at the discretion of the administering authority (h). When calculating pension all ranking service is aggregated, the total of completed years of contributing service is deducted, and the balance represents service ranking as non-contributing; a fraction of a year is counted as one year if amounting to six months or more, and if less than six months is disregarded (i). Subject to proof of good health and other matters specified in rules (k) made by the M. of H. a contributory employee may surrender not exceeding one-third of pension (including any additional amount granted by the employing authority above statutory entitlement) in return for the grant to a surviving spouse of an annual allowance within minimum and maximum limits laid down in the rules, *supra* (l). Amount of allowance is partly governed by the ages of pensioner and spouse in accordance with tables prepared by the Government actuary (m). A pension or allowance must not be assigned or made chargeable with debts or other liabilities (n). In the event of re-employment of a pensioner, the amount of pension must be reduced, if necessary, so that pension together with the new emoluments shall not exceed the remuneration on which the pension was granted, and other adjustments of superannuation rights may be required (o). [28]

Superannuation Fund.—Sums to be carried to the fund established in accordance with statutory requirements (p) comprise contributions of employees, an equivalent contribution by the employing authority, an equal annual charge or similar payments certified by an actuary as necessary to ensure solvency, transfer values received, and certain other sums (q). Free balances must be invested in trustee securities (r) or may be used by the administering authority in the exercise of a statutory borrowing power, or lent for a like purpose, to an employing authority contributing to the fund, interest payable to the fund being,

(f) L.G. Superannuation Act, 1937, s. 8 (2) (b), proviso (ii.); 30 Halsbury's Statutes 395, and S.R. & O., 1939, No. 52.

(g) *Ibid.*, s. 8 (3); *ibid.* Expression of maximum in this form enables more than forty years' service to be taken into account, provided pension does not exceed two-thirds of average remuneration.

(h) *Ibid.*, s. 8 (4); *ibid.*

(i) *Ibid.*, s. 8 (6), and s. 8 (7); *ibid.*, 396.

(k) Superannuation (Surrender of Superannuation Allowance) Rules, 1938; S.R. & O., No. 1509.

(l) L.G. Superannuation Act, 1937, s. 9; 30 Halsbury's Statutes 396.

(m) The first set of Tables prepared by the Government actuary were dated December 24, 1937, but new Tables may be prepared from time to time in the event of a change in the actuarial equivalent of a spouse's allowance to the value of that part of a pension which is surrendered.

(n) L.G. Superannuation Act, 1937, s. 23; 30 Halsbury's Statutes 406.

(o) *Ibid.*, s. 31; *ibid.*, 411, and L.G. Superannuation (Reduction and Adjustment of Superannuation Allowance) Regulations, 1939; S.R. & O., No. 53.

(p) *Ibid.*, s. 1 and s. 21 (1); *ibid.*, 387, 404.

(q) *Ibid.*, s. 6 (2) and s. 21 (2); *ibid.*, 393, 404.

(r) Defined in the Trustee Act, 1925; 20 Halsbury's Statutes 94.

as nearly as may be, at the current mortgage rate (s). Following the actuarial valuation required to be made after the "appointed day" (April 1, 1939) a valuation must be made at quinquennial intervals, and may be made at any other time if an administering authority so decide; a copy of the actuarial report must be sent to the M. of H. and a scheme made for dealing with a deficiency or surplus (t). [29]

Income Tax.—Subject to approval of a superannuation fund by the Commissioners of Inland Revenue, income from investments is exempt, and contributions made by an employer or employee are deductible when assessing tax (u). Arrangements can be made through a local inspector of taxes for payment of dividends to the superannuation fund without deduction of tax in respect of stocks inscribed or registered in the books of the Bank of England. In accordance with regulations made by the Commissioners of Inland Revenue, contributions are repayable to an employee without deduction of tax, but a payment has to be made from the superannuation fund equal to tax at one-fourth of the standard rate in force for the year in which repayment is made (a); no tax is payable where contributions are returned other than to "an employed person," e.g. to a widow, or to the wife or family of an employee ceasing to hold office on account of fraud or misconduct. Relief from income tax will apparently be obtainable on the principal sum (but not interest) paid by an employee in order to increase the fraction of one one-hundred-and-twentieth in respect of non-contributing service (b); amount so paid will be allocated to the years of service deemed to be covered, up to six anterior years, and relief will be allowed at the rates in force during respective years. A pension or allowance is taxable as earned income under Schedule E (c). [30]

Miscellaneous Provisions.—A combination scheme may be entered into by two or more administering authorities, and a joint superannuation fund maintained (d); there is no geographical limitation as regards ability of authorities to combine. Employees of statutory undertakings may be admitted by an administering authority, subject to approval of the M. of H. (e); employees of managers of a public elementary school maintained but not provided by a local education authority may be admitted by statutory resolution (f); and certified midwives employed by a voluntary organisation may be admitted (g).

A gratuity may be granted to any (h) employee ceasing to hold office,

(s) L.G. Superannuation Act, 1937, s. 21 (3); 30 Halsbury's Statutes 405.

(t) *Ibid.*, s. 22; *ibid.* Vide also M. of H. Circular 1798/S25 dated March 27, 1939, which accompanied L.G. Superannuation (Actuarial Valuations) Regulations, 1939; P.R. & O. in force from March 18, 1939.

(u) Finance Act, 1921, s. 32; 9 Halsbury's Statutes 630.

(a) S.R. & O., 1921, No. 1699, and S.R. & O., 1931, No. 638.

(b) L.G. Superannuation Act, 1937, s. 8 (2) (b) (ii.); 30 Halsbury's Statutes 395, and Finance Act, 1922, s. 31 (1); 9 Halsbury's Statutes 641.

(c) Income Tax Act, 1918, s. 14 (3), and Sched. E, Rule 1; 9 Halsbury's Statutes 431, as amended.

(d) L.G. Superannuation Act, 1937, s. 2; 30 Halsbury's Statutes 388.

(e) *Ibid.*, s. 5 (1); *ibid.*, 391. Vide also M. of H. circular 1772/S19, dated February 14, 1939, and accompanying model form of admission agreement.

(f) *Ibid.*, s. 3 (2) (f); *ibid.*, 390.

(g) *Ibid.*, s. 5 (5); *ibid.*, 392. Vide also M. of H. circular mentioned at preceding note (f).

(h) In M. of H. circular 353, dated January 8, 1923, it was stated in connection with s. 23 (2) of the L.G. and Other Officers' Superannuation Act, 1922, the wording

and who is not entitled to a superannuation allowance up to an amount not exceeding twice the annual value of emoluments (i); a contributory employee may be paid a gratuity, by way either of a lump sum or periodical payments, as well as a pension, in the event of retirement due to injury received in the actual discharge of duty, subject to various qualifications (k).

Local Act provisions have been adapted or superseded by statute or resolution (l) and by schemes required to be made by local Act authorities for the purpose of assimilating those provisions with the general law.

A whole-time officer appointed in a temporary capacity does not become a contributory employee or local Act contributor unless the authority so resolve or unless his service under the same or another local authority aggregates two years; a transfer value is payable in the event of completion of the requisite two-years' period with an authority whose employment is entered within twelve months of leaving another (n).

The M. of H. may, on an appeal to him, determine any question concerning the rights or liabilities of an employee of a local authority, and may in his discretion, or must if so directed, state a case for the High Court on any question of law (o); his approval must be sought in the case of new or amended schemes and he is empowered to make regulations (p).

Power conferred by general or special law does not necessarily preclude a local authority from participating in a voluntary scheme for the benefit of their employees (q). [31]

of which was practically similar to that of corresponding s. 11 (1) of the Act of 1937, that "the Minister is advised that this provision is not limited to officers or servants holding designated posts," thus supporting the view that the new provision in s. 11 (1) is not limited to a contributory employee.

(i) In *H. of C., Standing Committee C*, the Minister of Health stated (p. 54 of Official Report), when dealing with a request for definition, that "the word 'emoluments' is practically the widest phrase that you can use; it is used in this Bill (subsequently Act of 1937) to cover gratuities and matters of that kind." Gratuities were regarded as part of a registrar's emoluments (though such might not have been the case in the absence of the Minister of Health's earlier sanction) in *R. v. Grain, Ex parte Wandsworth Union* (1927), 91 J. P. 71; Digest (Supp.). Special duty grants for additional services and responsibilities undertaken during the 1914-18 war were held to be "emoluments" in *R. v. Lyon, Ex parte Harrison*, [1921] 1 K. B. 203; 85 J. P. 78; 33 Digest 248, 1688.

(k) L.G. Superannuation Act, 1937, s. 11; 30 Halsbury's Statutes 398. In *Holloway v. Poplar Borough Council* (1939), 103 J. P. 419; Digest (Supp.), it was held that a subsection of a local Act conferred no legal rights on a person to whom the council resolved that a gratuity should be paid under it. Although the subsection did not mention payment by instalments, as implied in s. 11 (1) of the Act of 1937; 30 Halsbury's Statutes 398, it was held further that the subsection empowered payment in that manner.

(l) *Ibid.*, s. 25 and s. 26; 30 Halsbury's Statutes 407.

(n) *Ibid.*, s. 30; 30 Halsbury's Statutes 410.

(o) *Ibid.*, s. 35; *ibid.*, 413. The Minister's decisions from the commencement of the Act issued until the outbreak of war in September, 1939, were printed week by week in the J. P. Jo. Subject to the provision as to the stating of a case, a decision of the Minister of Health is final: *R. v. M. of H., Ex parte Wycombe Union* (1922), 87 J. P. 37; 37 Digest 214, 104, and *R. v. M. of H., Ex parte Committee of Visitors of Glamorgan County Mental Hospital*, [1938] 4 All E. R. 32; Digest (Supp.).

(p) *Ibid.*, s. 36, and 3rd Sched.; 30 Halsbury's Statutes 414, 429.

(q) *Armour and Others v. Liverpool Corpn.*, [1939] 1 All E. R. 363; 103 J. P. 111; Digest (Supp.).

MENTAL HOSPITALS AND CERTIFIED INSTITUTIONS

Classification of Employees.—The first class consists of established officers and servants who have the care or charge of patients in the usual course of their employment, and the second class of all other established officers and servants (*r*). An “established officer or servant” is defined (*s*) as an officer or servant employed in a permanent capacity who has the care or charge of patients, or whom the visiting committee of an asylum (or managers of an institution) by resolution determine to be an established officer or servant. The question whether an employee has “care or charge” of patients is one of fact (*t*). Permanence of employment is likewise determinable on facts, but it seems that a “temporary” appointment held for a lengthy period would have to be regarded as “permanent” for superannuation purposes. An officer or servant in a certified institution is treated as an officer or servant of the second class (*u*). [32]

Contributions.—A contribution at the rate of 2 per cent. is ordinarily payable on salary or wages and emoluments, by deduction from salary or wages, and the rate of contribution is $2\frac{1}{2}$ per cent. or 3 per cent., according to length of service, where an employee had served for upwards of five years at the passing of the Act (December 3, 1909) (*a*). There is no superannuation fund at present. A certified institution employee contributes at the rate of $2\frac{1}{2}$ per cent., unless liable to contribute at 2 per cent. at the time of removal from a mental hospital (*b*); additional contributions are required in certain circumstances before an employee can count service prior to the date of a resolution establishing his appointment (*c*). Emoluments are defined (*d*), and salary or wages for this and other purposes appear to be those actually paid to an employee. Aggregate contributions of an employee not entitled to a superannuation allowance are returnable, without interest, in the event of loss of office by reason of reduction of staff, or of any cause other than misconduct or voluntary resignation (*e*). Whole or part of contributions may be returned if all claim to a superannuation allowance is forfeited upon ceasing to hold office in consequence of

(*r*) Asylums Officers' Superannuation Act, 1909, s. 1 (1); 11 Halsbury's Statutes 152.

(*s*) *Ibid.*, s. 17 (1); *ibid.*, 158.

(*t*) An upholsterer who had charge of the upholsterers' shop at a county mental hospital, in which patients regularly worked under his direction, has been regarded as having “care or charge.”

(*u*) Asylums and Certified Institutions (Officers Pensions) Act, 1918, s. 1 (1), proviso (*a*); 11 Halsbury's Statutes 197.

(*a*) Asylums Officers' Superannuation Act, 1909, s. 8, and s. 9; 11 Halsbury's Statutes 155.

(*b*) Asylums and Certified Institutions (Officers Pensions) Act, 1918, s. 1 (1), proviso (*c*); 11 Halsbury's Statutes 197.

(*c*) Order of the Secretary of State, November 19, 1918, articles (2) and (3) (S.R. & O., 1918, No. 1506).

(*d*) Asylums Officers' Superannuation Act, 1909, s. 16; 11 Halsbury's Statutes 158. Payments made to established officers and servants at certain mental hospitals, in respect of additional responsibilities undertaken during the 1914–18 war, were held to be “emoluments” in *R. v. Lyon, Ex parte Harrison* (1921), 85 J. P. 78. Value of uniform for superannuation purposes was assessed in *Kiddie v. Port of London Authority* (1929), 93 J. P. 208, at half-way between the actual cost to the authority and the retail price which would have been payable by the employee.

(*e*) In *McManus v. Bowes*, [1938] 1 K. B. 98; [1937] 3 All E. R. 227; Digest (Supp.), an unsuccessful claimant for a superannuation allowance was held to be barred from a return of contributions because his claim for such return was not made within the period of six months laid down in the Public Authorities Protection Act, 1893, s. 1; 13 Halsbury's Statutes 455.

fraud or misconduct; at the discretion of a visiting committee or managers, contributions may be returned to a female employee on her leaving to be married after three or more years' service, and provided a marriage certificate is produced (*f*); contributions refunded earlier must be repaid by an employee immediately on re-entering service as a condition precedent to the counting of previous service for pension purposes (*g*). Income tax relief is allowed from Schedule E assessment in respect of contributions made by an employee, and sums so allowed are deductible from a refund of contributions, after the amount of tax has been ascertained from the local Inspector of Taxes (*h*). [33]

Service.—All service in an asylum, certified institution and otherwise under a local authority, may according to circumstances, be aggregated for pension purposes. Conditions precedent to aggregation of service are, ordinarily, that removal from one asylum or institution to another must be made with the written sanction of the visiting committee or managers, and previous service must amount to at least two years' continuous service (*i*). An asylum employee not having care or charge of patients who is established by resolution of the visiting committee can only reckon service from the date of such resolution. Counting of service following a break is contingent upon repayment of any contributions refunded earlier (*k*), and it seems that if service is discontinuous, though aggregable, the authority paying pension is precluded from calling upon an earlier authority to contribute a proportionate part of such pension. An established officer or servant having the care or charge of patients in a certified institution can count service prior to August 8, 1918, only upon making an appropriate payment; an officer or servant not having care or charge of patients who is established by a resolution of managers is entitled to count only service after the date of resolution, but can be allowed to count earlier service upon making an appropriate payment (*l*). Service with H.M. Forces during the 1914-18 war is reckonable, and war service during the period commencing September 1, 1939 (*m*). Teaching service in a certified institution which is also a certified school for defective children under the Education Act, 1921, will rank under the Acts relating to teachers if excepted from the operation of other provisions by the Minister of Health (*n*). Special provisions regulate the counting of local government service other than in an asylum or certified institution and *vice versa* (*o*). [34]

Transfer.—Provisions relating to transfer between one asylum or certified institution and another are largely concerned with an employee's

(*f*) A balance of opinion appears to support aggregation of established service in two or more mental hospitals in arriving at the qualifying period of three years, and return of contributions by the respective visiting committees.

(*g*) Asylums Officers' Superannuation Act, 1909, ss. 5, 10; 11 Halsbury's Statutes 154, 155.

(*h*) Finance Act, 1922, s. 31; 9 Halsbury's Statutes 641.

(*i*) Asylums Officers' Superannuation Act, 1909, s. 6; 11 Halsbury's Statutes 154.

(*k*) *Ibid.*, s. 10 (3); *ibid.*, 155.

(*l*) Order of the Secretary of State, dated November 19, 1918 (S.R. & O. No. 1506).

(*m*) L.G. (Emergency Provisions) Act, 1916, s. 3; 10 Halsbury's Statutes 853, and L.G. Staffs (War Service) Act, 1939; 32 Halsbury's Statutes 1118.

(*n*) Jointly Certified Institutions (Pensionable Teaching Service) Order, 1932 (S.R. & O., No. 601).

(*o*) L.G. Superannuation Act, 1937, Second Sched., Pt. V., and L.G. Superannuation (Mental Hospital, etc., Employment) Regulations, 1939.

contributions, service, and pension (*vide* paras. 33, 34 and 37). Separate legislation deals with transfers to and from the civil service (*p*), and to and from other branches of the local government service (*q*). [35]

Retirement.—If a visiting committee of an asylum deem it expedient in the interests of the service, an established officer or servant of the first class who has attained fifty-five years of age may be required to retire upon payment of a superannuation allowance. A similar provision is applicable to an established officer or servant of the second class after the age of sixty years has been attained; this latter provision is also applicable to certified institution employees, whose classification is limited by statute to that of the second class. [36]

Pension.—The following superannuation allowances are payable to established officers or servants:

	<i>First Class (asylums).</i>	<i>Second Class (asylums and certified institutions).</i>
Age and ground of retirement (<i>r</i>).	Not less than fifty-five years, or upon medically certified permanent incapacity not attributable to own misconduct.	Not less than sixty years' or upon medically certified permanent incapacity not attributable to own misconduct. Officer who has removed from an asylum may, in certain circumstances, retire at fifty-five (<i>t</i>).
Qualifying period of service (<i>r</i>).	Not less than twenty years.	Not less than twenty years.
Added years (<i>r</i>).	Not exceeding ten years may be added to actual service in respect of peculiar professional qualifications or special circumstances, with the consent of the Minister of Health (<i>u</i>).	Similar power in respect of asylums officers. Application to certified institution employees barred by Act of 1918, s. 1 (1), proviso (<i>s</i>).
Average salary or wages and emoluments, and definition (<i>s</i>).	Average for the ten years preceding date of retirement.	Average for the ten years ending on the quarter day preceding date of retirement.
Fraction of average salary or wages and emoluments for each completed year of service (<i>r</i>).	One-fiftieth.	One-sixtieth, but asylums service of an officer or servant who removed from an asylum when of the first-class ranks for fiftieths (<i>t</i>).
Following injury during discharge of duty, <i>et seq.</i> (<i>r</i>).	Special superannuation allowance (or gratuity <i>q.v.</i>) may be granted, as the visiting committee or managers may consider reasonable; superannuation allowance need not be based on years of service, but maximum, <i>infra</i> , applies.	
Maximum (<i>r</i>).	Two-thirds of salary or wages and emoluments. [37]	

(*p*) Superannuation Act, 1935, s. 9; 28 Halsbury's Statutes 302, and Local Government and Civil Service (Superannuation) Rules, 1938 (S.R. & O., 1936, No. 651).

(*q*) *Vide* para. 26.

(*r*) Asylums Officers' Superannuation Act, 1909, s. 2, except as otherwise noted; 11 Halsbury's Statutes 152.

(*s*) *Ibid.*, s. 16; *ibid.*, 158.

(*t*) Asylums and Certified Institutions (Officers' Pensions) Act, 1918, s. 1 (1), proviso (*d*); 11 Halsbury's Statutes 197.

(*u*) Minister of Health was substituted for Secretary of State, here and elsewhere, by the Ministry of Health (Lunacy and Mental Deficiency, Transfer of Powers) Order, 1920 (S.R. & O., 1920, No. 809).

Where a pension is being paid on the ground of incapacity for performance of duty, the visiting committee or managers must satisfy themselves at intervals with regard to continuance of incapacity, and if it ceases before normal date of permissible retirement may require the employee to serve again at not less than the earlier rate of pay; subsequent service will rank for later pension, but not the period of incapacity (a). A proportionate contribution towards a pension is payable by a visiting committee or managers under whom an employee had previous service (b); removal must, apparently, have been direct, and, in practice, proportions correspond with total salary or wages and emoluments in the respective employments. Whole or part of a superannuation allowance may require to be suspended during employment in certain branches of the public service (c). An appeal may be made to the Minister of Health in the event of dispute with regard to right to, or amount of, a superannuation allowance (d). [38]

Gratuity.—In the event of permanent incapacity arising from an injury received in the discharge of, or attributable to the nature of, his duty, an established officer or servant may be granted a gratuity not exceeding one year's salary or wages and emoluments (e). The widow or children of an established officer or servant may be granted a gratuity not exceeding his total contributions, or one year's salary or wages and emoluments, whichever is the larger, provided the employee was entitled to a superannuation allowance, or might have been granted a special superannuation allowance; in the latter case, alternatively, an annual allowance not exceeding two-thirds of salary or wages and emoluments may be granted (f). [39]

Assignment (g).—An assignment of a superannuation allowance, allowance or gratuity is void, unless made for the benefit of a family. A payment may be made direct to a public assistance authority in repayment of sums expended, or for the benefit of specified persons. Moneys may be paid to or applied for the benefit of dependants, and provision is made against insanity or other incapacity of a payee. On the death of a person to whom an amount not exceeding £100 is due, probate or other proof of title may be dispensed with, and distribution made to entitled beneficiaries or other persons. A payment may be made to a minor or for his benefit. Rules may, with the consent of the Minister of Health, be made by a visiting committee or managers with respect to a declaration to be made by a recipient of moneys, *supra*. [40]

(a) Asylums Officers' Superannuation Act, 1909, s. 3; 11 Halsbury's Statutes 152.

(b) *Ibid.*, s. 12; *ibid.*, 156.

(c) *Ibid.*, s. 7; *ibid.*, 154.

(d) *Ibid.*, s. 15; *ibid.*, 158. In *R. v. Minister of Health, Ex parte Committee of Visitors of Glamorgan County Mental Hospital*, [1938] 4 All E. R. 32, an employee had, on appeal to the M. of H. under s. 15 of the Act of 1909, been awarded a superannuation allowance against the hospital. Held, by the Court of Appeal, that s. 15 read with s. 11 enabled the Minister to come to a "final" decision against which *certiorari* will not issue; the correctness or otherwise of the decision is immaterial to its finality.

(e) *Ibid.*, s. 2 (4); 11 Halsbury's Statutes 153. As to recovery, see *Holloway v. Poplar Borough Council*, note (o), *ante*, p. 24.

(f) *Ibid.*, s. 4; *ibid.*, 154.

(g) *Ibid.*, s. 14; *ibid.*, 157.

SCHOOL TEACHERS

Introduction.—The Teachers (Superannuation) Acts, 1918 to 1939, are the principal enactments comprising a separate code applicable to teachers, to persons employed in the control or supervision of teachers, and to their legal personal representatives. The Teachers (Superannuation) Act, 1925, substantially replaced earlier provisions while preserving the position, with modifications, of certain then existing teachers. Various provisions permit interchange between branches of the teaching or other public service in this country and abroad, either with continuance of rights under the Acts relating to teachers or counting of teaching service for the purpose of other enactments. There is no superannuation fund, teachers' contributions deducted from their salaries by local education authorities being taken into account, together with the employer's contribution, when payments of Government grant in aid are being made. An account of all revenue and expenditure is, however, kept in a form laid down in Treasury regulations (*h*), and an actuarial inquiry (*i*) is made at seven-years' intervals in order to ascertain whether contributions balance benefits. [41]

Contributions.—An amount equal to 5 per cent. of salary (*k*) for the time being is payable by teacher and employer respectively, and such amounts are, in effect, paid into the Exchequer through the Board of Education. Contributions on salary actually paid are made in respect of a period of reduction due to sickness (*l*). Contributions at 10 per cent. of salary may be made by a teacher in order to count certain full-time teaching service, not exceeding 5 years, outside the United Kingdom or in order to count a period of discontinued employment not exceeding one year in any other case; salary on which contributions are based is that immediately prior to discontinuance of service, and one-half of the 10 per cent. is treated as teachers' and one-half as employers' contribution (*m*).

A refund of contributions must be made to a teacher who ceases to be employed in contributory service for a continuous year, or less in special circumstances, but those contributions may be repaid by the teacher, with interest, in order to aggregate earlier service with that in respect of subsequent employment; a refund must be made to a teacher who attains sixty-five years of age but is not qualified for a superannuation allowance; legal personal representatives are entitled to receive payment (*n*). Contributions under a scheme applicable to non-grant-aided schools must be equal in value to benefits (*o*). [42]

(*h*) S.R. & O., 1928, No. 17.

(*i*) Teachers (Superannuation) Act, 1925, s. 15; 7 Halsbury's Statutes 332. First report, dated March 30, 1935, of the Government actuary covered the seven years to March 31, 1933, and an increase of contributions by 2 per cent., to 12 per cent., divided equally between teachers and employers, was recommended; having regard, however, to the comparatively short period during which the pension system set up by the Act of 1925 had been in operation it was decided to make no revision on that occasion.

(*k*) *Ibid.*, s. 10 (1), sums from time to time paid in respect of contributory service, excluding, unless the Board otherwise direct, any fees or other emoluments. The Board have directed, *inter alia*, that the value of a dwelling-house or other residential accommodation provided free of rent, and the value of coal, light and water supplied in connection therewith, shall not be excluded in the calculation of salary.

(*l*) *Ibid.*, s. 10 (1) (b); 7 Halsbury's Statutes 326.

(*m*) Teachers (Superannuation) Act, 1937, s. 2; 30 Halsbury's Statutes 182.

(*n*) Teachers (Superannuation) Act, 1925, s. 12; 7 Halsbury's Statutes 328. Interest is calculated on amounts due to and from a teacher and a net payment made, and Scottish contributions are included.

(*o*) *Ibid.*, s. 21 (1) (a); 7 Halsbury's Statutes 335. The Government actuary

Service.—Broad definition is salaried employment under a contract of service. Kinds of service are defined in considerable detail under four generic heads, namely, as recognised, contributory, approved external, or qualifying service (*g*).

Recognised service is service before April 1, 1926 (date of commencement of the Act of 1925) and includes, *inter alia*, recognised service within the meaning of School Teachers (Superannuation) Acts, 1918 to 1924; grant-aided (*g*) full-time service in the capacity of a teacher otherwise than in a school in the employment of a local education authority; or service since March 1, 1919, which would have been recognised but for certain disqualifying provisions of the Acts of 1898 and 1918 (*r*).

Contributory service is service as a teacher after April 1, 1926, which the Board of Education determine to be full-time service in the capacity of, for instance, a certified or uncertificated teacher, a teacher of a special subject (*g*), in or in connection with a public elementary school (*s*), or poor law school (*t*); a teacher of such kind as may be prescribed by the Board, in a grant-aided nursery school; a certificated or uncertificated teacher in a certified institution under the Mental Deficiency Act, 1913; or a teacher in grant-aided service, otherwise than in a school, in the employment of a local education authority, and approved by the Board (*a*).

Approved external service includes, subject to various qualifications, service recognised by the Scottish Education Department; as an inspector of the Board or in any other capacity as a civil servant, approved by the Treasury, in which teaching experience is or was of value; in a university or university college in England, Wales or Scotland in respect of which contributions are payable under any general superannuation scheme; or a place of education in the United Kingdom subject to conditions prescribed by the Board (*b*).

Qualifying service is such employment as the Treasury may declare to rank for the purpose of computing the period qualifying for a superannuation allowance (*c*).

Recognised or contributory service may rank as contributing or non-contributing service under provisions applicable to the administrative staff of a local authority (*d*). Service may rank under schemes made by the Board of Education, with the consent of the Treasury (*e*), in the case of (1) a person employed as a teacher in a non-grant-aided

stated in his first valuation report, dated October 31, 1935, that contributions of 10 per cent. of salary were sufficient at that time.

(*g*) See Teachers (Superannuation) Act, 1925, s. 18; 7 Halsbury's Statutes 334, for definitions.

(*r*) *Ibid.*, s. 2 (*a*); 7 Halsbury's Statutes 318.

(*s*) Public elementary school is defined in the Education Act, 1921, s. 27; 7 Halsbury's Statutes 142, as one conducted in accordance with regulations therein set out.

(*t*) L.G.A., 1929, Tenth Schedule, para. 19; 10 Halsbury's Statutes 998.

(*a*) Teachers' (Superannuation) Act, 1925, s. 2 (*b*); 7 Halsbury's Statutes 319. Board of Education admin. memo. No. 172, stated, *inter alia*, that the service of a full-time instructor-leader employed in connection with the national fitness campaign would ordinarily rank as contributory service.

(*b*) *Ibid.*, s. 13; 7 Halsbury's Statutes 328.

(*c*) A Treasury declaration sets out kinds of service ranking as qualifying, and includes that of an official of a local education authority whose salary is payable out of the education rate.

(*d*) L.G. Superannuation Act, 1937, s. 17; 30 Halsbury's Statutes 400.

(*e*) Teachers (Superannuation) Act, 1925, s. 21; 7 Halsbury's Statutes 335.

school (f), (2) a teacher employed in a Government department or in an institution provided or aided by a Government department (g), (3) a teacher who has been subject to a statutory scheme in any part of His Majesty's dominions, as defined (h). War service may rank (i). Periods of absence which may rank as service have been defined by the Board of Education, in addition to periods of discontinued employment (including while employed as a teacher in a foreign country) provided for by statute (k). [43]

Retirement.—Although there is no specific age-limit upon attaining which a teacher must retire, various statutory provisions operate or are operated in such a way as to bring about retirement not later than upon attainment of the age of sixty-five years. For instance, a local education authority may require teachers appointed by them and holding office during their pleasure (l) to retire on attaining the age mentioned; recognition by the Board of Education of a teacher in a public elementary school ordinarily expires on attainment of sixty-five years of age unless, on account of special fitness, service is allowed to continue for a further limited time (m); and the fact that service for pension purposes normally ceases to rank after age sixty-five tends to discourage service after that time. Retirement may occur when a teacher attains sixty years of age and is qualified for pension by length of service, or earlier owing to permanent incapacity through infirmity of mind or body. [44]

Pension.—While some pensions are granted under earlier enactments, the Teachers (Superannuation) Act, 1925, as extended, is now mainly applicable. Under that Act, qualification for pension may occur in four ways (n). Firstly, upon attainment of age sixty after completion of thirty years (o) of recognised, contributory, or qualifying service, of which not less than ten years was recognised or contributory and

(f) A scheme dated October 11, 1926 (S.R. & O., No. 1314), covers service in practically any non-grant-aided school, provided the school has been brought within the scheme following application by the governing body or proprietors; the scheme contains modifying provisions. Some 2,500 full-time teachers, in upwards of 200 non-grant-aided schools approved by the Board of Education under s. 21 (1) (a) of the Act of 1925, are thus enabled to count their service for pension under that Act.

(g) A scheme dated May 2, 1930 (S.R. & O., No. 309), enables past employment in the Royal Air Force Teaching Service to rank, and other schemes relate to a teacher in a junior instruction centre to which a grant is made by the Ministry of Labour (S.R. & O., 1931, No. 199), a teacher in a remand home provided by Parliament under the Children and Young Persons Act, 1933 (S.R. & O., 1934, No. 622), and a teacher in a State institution for defectives (S.R. & O., 1935, No. 506).

(h) Prior to December 31, 1938, reciprocal arrangements had been made between the Board of Education and authorities administering statutory schemes in twenty-eight parts of the Empire. Earliest arrangements are embodied in the Teachers' Superannuation (Colonial Reciprocity) Scheme, 1933 (S.R. & O., No. 422), concerning reciprocity between England and Wales and twenty-four parts of the Empire.

(i) Teachers (Superannuation) Act, 1925, s. 18 defines, and Teachers Superannuation Rules, 1926, Rule 30, prescribe circumstances. Also, the Teachers Superannuation (War Service) Act, 1939; 32 Halsbury's Statutes 1131, deals with war service during the emergency commencing on September 1, 1939.

(k) Teachers Superannuation Rules, 1926, Rule 28 (S.R. & O., No. 415), Teachers Superannuation Amending Rules, 1937 (S.R. & O., No. 808), and Teachers (Superannuation) Act, 1937, s. 2; 30 Halsbury's Statutes 182.

(l) Education Act, 1921, s. 148 (1); 7 Halsbury's Statutes 204.

(m) Code of Regulations for Public Elementary Schools, Grant Regulations, No. 8, Sched. I., para. 8 (S.R. & O., 1926, No. 856).

(n) Teachers (Superannuation) Act, 1925, s. 3; 7 Halsbury's Statutes 321.

(o) *Ibid.*, s. 3 (2); *ibid.*, 322, reducible by not exceeding ten years in respect of absences of a married woman.

not less than a prescribed (*p*) period was after March 31, 1919. Secondly, in the case of a teacher to whom the Elementary School Teachers (Superannuation) Act, 1898, applied on April 1, 1919, upon attainment of age sixty after recognised or contributory service aggregating not less than half the number of years between date of certification as a teacher and attainment of age sixty-five; effect frequently is to enable a teacher in this category to claim a pension at age sixty instead of having to wait until age sixty-five. Thirdly, upon attainment of age sixty after recognised or contributory service for periods aggregating not less than two-thirds of the total period between original entry into that service and attainment of age sixty-five, with a minimum service of ten years; provision is thus made for a qualifying period decreasing below that of thirty years (under firstly, *supra*) as age of entry increases. Fourthly, upon permanent incapacity through infirmity of mind or body, after not less than ten years' recognised or contributory service, and employment within a period of six months (*g*) immediately preceding application for a pension.

The annual allowance is either calculated on the basis of one-eightieth of average salary (*r*) for each completed year of recognised or contributory service, or is equal to one-half of the average salary, whichever is the less; the limitation is tantamount to restriction of ranking service to forty years. A lump sum (referred to as an additional allowance) is also payable; this is equal to one-thirtieth of average salary for each completed year of recognised or contributory service, or to one-and-a-half times the average salary, whichever is the less.

A superannuation allowance ceases to be payable in the event of re-employment in contributory service or similar, but the Board of Education may, in certain circumstances, restore the allowance, or subsequently grant another allowance; the Board may make such deductions as appear to them to be equitable in order to avoid duplicate pensions in respect of the same service; the Board may withdraw an allowance granted on the ground of permanent incapacity, where they are satisfied (possibly, after a medical examination) that a teacher has ceased to be incapable (*s*).

A teacher may surrender, or allocate, a part of a superannuation allowance in return for the grant of certain benefits to or in respect of the wife or husband, or a dependant of the teacher. An allocation may be made under Option A, the benefit being a pension payable to the wife or husband or a dependant of the teacher after the death of the teacher, or under Option B (applicable only to a wife or husband), the benefit consisting of two parts (1) an annuity payable to the teacher while the wife or husband of the teacher is alive, and ceasing on the death of the wife or husband, and (2) a pension of double the amount of this annuity payable to the widow or widower when the teacher is dead (*t*).

(*p*) Teachers Superannuation Rules, 1926, s. 8 (S.R. & O., No. 415), sets out periods ranging up from one day to three years according to length of different kinds of service.

(*q*) *Ibid.*, s. 9.

(*r*) Teachers (Superannuation) Act, 1925, s. 10; ordinarily, the average of full salary for the last five years (not necessarily continuous) of recognised or contributory service. Fees and emoluments which may be included with salary are set out in a Board of Education Order dated October 14, 1926. Reduction of salary during sickness is disregarded (Teachers Superannuation Rules, 1926, s. 27; S.R. & O., No. 415).

(*s*) *Ibid.*, ss. 6, 7 and 8.

(*t*) Teachers (Superannuation) Act, 1937, s. 1. A Board of Education booklet

If a superannuation allowance is paid or payable in respect of teaching service this may reduce the amount payable in respect of non-teaching service under a local authority (u). [45]

Gratuity.—A short-service gratuity is payable to a teacher who becomes permanently incapable, through infirmity of mind or body, of serving efficiently, before qualifying for a superannuation allowance (a), subject to having served in recognised or contributory service for not less than, and within, a prescribed period (b); the amount of the gratuity must not exceed one-twelfth of average salary (c) in respect of each completed year of service.

A death gratuity (d) is granted to legal personal representatives of a teacher who has served in recognised or contributory service for a period of not less than five years, of which a prescribed (e) part has been after March 31, 1919. The amount of the gratuity must not exceed the average salary, and may be subject to specified deductions. Discretionary power is vested in the Board of Education to grant a gratuity in the case of a teacher who dies within twelve months of ceasing to be in contributory service (f). A supplementary death gratuity is paid where a teacher dies before drawing an aggregate amount of superannuation allowance equal to the amount of average salary; the gratuity is equal to the difference between those amounts (g). Where a death gratuity is not payable owing to a teacher's dying in employment after sixty-five years of age, a gratuity equal to an additional allowance is paid by the Board of Education (i). [46]

Miscellaneous Provisions.—An "organiser" may be subject to teachers' superannuation provisions, although serving on the administrative staff of a local education authority. An "organiser" is one who is or has been employed by a local education authority in full-time service, which to a substantial extent involves the control or supervision of teachers, and who was previously employed as a teacher for not less than three years (k).

(Form 207 Pen.) contains an explanatory memorandum, Rules made by the Board, and Tables indicating the amount of benefit to be granted in respect of each £1 of annual superannuation allowance surrendered by the teacher.

(u) L.G. Superannuation Act, 1937, s. 17; 30 Halsbury's Statutes 402, and Local Government Superannuation (Teachers) Provisional Regulations dated and in operation from March 11, 1939, which accompanied M. of H. Circular 1790/S22, dated March 21, 1939.

(a) Teachers (Superannuation) Act, 1925, s. 4; 7 Halsbury's Statutes 323.

(b) Teachers Superannuation Rules, 1926, prescribe, *inter alia*, total service of not less than three years since March 31, 1919 (Rule 8), and service within a period of six months immediately preceding date of application for a gratuity (Rule 9).

(c) As to "average salary," see note (r), *ante*, p. 32.

(d) A death gratuity has been held to be liable to estate duty under the Finance Act, 1894, ss. 2 (1) (a) and 22 (2) (a); *A.-G. v. Quinley* (45 T. L. R. 455).

(e) Teachers Superannuation Rules, 1926, Rule 8.

(f) Teachers (Superannuation) Act, 1925, s. 5 (1); 7 Halsbury's Statutes 323.

(g) *Ibid.*, s. 5 (2).

(h) *Ibid.*, s. 3 (4), proviso; 7 Halsbury's Statutes 322.

(k) *Ibid.*, s. 14; 7 Halsbury's Statutes 331, and Teachers (Superannuation) Act, 1937, s. 3; 30 Halsbury's Statutes 183. Board of Education admin. memo. No. 172 stated that, according to circumstances, a principal, warden, or organising secretary of an institute or centre maintained or aided under the Education Act, 1921, s. 86; 7 Halsbury's Statutes 177 (social and physical training), as extended, may be treated as an "organiser."

The Board of Education have explicit and wide powers to determine questions with regard to a superannuation allowance, gratuity, return of contributions, and amount of average salary. Assignment of or charge on a superannuation allowance and other moneys is void, and there is certain protection given in the event of bankruptcy. Probate or other proof of title may be dispensed with before payment of a sum not exceeding £100 in respect of an allowance or gratuity. The Board may pay moneys due to a mentally disabled person to an institution or other person.

A reduction may be made in a superannuation allowance or gratuity to a teacher who has ceased to serve in consequence of grave misconduct (*l*), or other reason, but such reduction may be restored by the Board subsequently; false representation and fraud is punishable on conviction on indictment, by not exceeding two years' imprisonment, and, on summary conviction, by not exceeding three months' imprisonment or a fine not exceeding twenty-five pounds. The governing body of a school have power to fulfil conditions in order that service in that school may be contributory service, notwithstanding any provision regulating the trusts or management of a school (*m*). [47]

LONDON

London County Council.—Under the Superannuation (Metropolis) Act, 1866, vestries and the Metropolitan Board of Works had an option to grant superannuation, and gratuities before entitlement to superannuation, charged on the fund to which salaries were charged. No contributions were required from employees. Superannuation was based on sixtieths. The Act of 1866 is applicable to the L.C.C. and the metropolitan borough councils, but the county council and most of the borough councils, do not now pay allowances under the 1866 Act.

The L.C.C. (General Powers) Act, 1891, Part IV., gives the council power to establish a superannuation and provident fund and to make a superannuation scheme. The Act sets out the matters which may be dealt with in the scheme (*n*). Provision is made for audit (*o*), forfeiture of rights in certain cases (*p*), contribution by the Council to the fund (*q*), the making of contracts with insurance companies (*r*), and alterations of the scheme (*s*). No person coming under the scheme is entitled to a pension under the Superannuation Acts as defined in the 1891 Act.

The L.C.C. (General Powers) Act, 1892, sect. 41 (*t*), enables the Council in the scheme to provide for payments in respect of persons dying or becoming incapacitated before becoming entitled to a pension. The L.C.C. (General Powers) Act, 1907, Part VIII, makes further pro-

(*l*) The Forfeiture Act, 1870, s. 2; 4 Halsbury's Statutes 648, sets out various circumstances in which a superannuation allowance payable out of any public fund is to cease forthwith, including the recipient's imprisonment with hard labour, or for a term exceeding twelve months.

(*m*) Teachers (Superannuation) Act, 1925, s. 16, and First Schedule.

(*n*) S. 62; 11 Halsbury's Statutes 1108.

(*o*) S. 63; *ibid.*, 1110.

(*p*) S. 64; *ibid.*

(*q*) S. 66; *ibid.*

(*r*) S. 67; *ibid.*, 1111.

(*s*) S. 68; *ibid.*

(*t*) 11 Halsbury's Statutes 1113.

visions as to the scheme, and gives power to the council to make additional payments or allowances (*u*).

The L.C.C. (General Powers) Act, 1911, Part I., as amended by sect. 31 of the L.C.C. (General Powers) Act, 1924 (*a*), deals with the superannuation of officers transferred from the School Board for London. Such officers as now remain have been transferred to the fund set up under the Act of 1891, by the L.C.C. (General Powers) Act, 1937, Part VI. Under the L.C.C. (General Powers) Act, 1921, sect. 31 (*b*), the council may pay compensation for loss of office up to the amount which would have been payable on retirement for ill-health. The L.C.C. (General Powers) Act, 1929, sects. 53—54 (*c*), gives power to grant superannuation on a basis similar to other employees to persons employed in polytechnics and certain other educational institutions. For the superannuation of non-teaching staff of non-provided schools, see the L.C.C. (General Powers) Act, 1938, sect. 7 (*d*).

The L.C.C. (General Powers) Act, 1930, sect. 34 (*e*), deals with the superannuation of the Clerk of the Peace and officers in the employ of the Standing Joint Committee.

Sect. 60 of the same Act (*f*) enables the council to take into account the previous pensionable local government service of certain persons taken into the service of the council in consequence of the devolution of duties upon the council under the L.G.A., 1929, and certain persons in the service of the Leyton U.D.C., whose tramway undertaking was transferred to the council. Provision is made for payment of transfer values; the Act (*g*) also empowers the council to pay gratuities in respect of persons who may while in their service be disabled, injured or incapacitated by age, sickness or other infirmity, and who are not otherwise pensionable or in receipt of workmen's compensation, or to the family of a person who dies whilst in the service of the L.C.C. An aggregate period of twenty years in the service of the L.C.C. or of the L.C.C. and a previous employer as referred to in the section is required.

The L.C.C. (Money) Act, 1936, sect. 8, contains provisions to enable the council to use for the purpose of its statutory borrowing powers unrequired moneys forming part of the superannuation and other reserve funds.

The L.C.C. (General Powers) Act, 1936, sect. 46 (*h*), enables contributors to the Superannuation and Provident Fund on retirement to surrender part of their pension in return for a pension for their wives or dependants.

The London Passenger Transport Act, 1933, and the L.C.C. (General Powers) Act, 1937, sect. 120 (*i*), deal with the superannuation of employees transferred to the London Passenger Transport Board from the Council.

The London Local Authorities (Superannuation) Temporary Provisions Act, 1932, enabled superannuation to be based on the full salary, etc., without regard to temporary reductions due to national economic conditions.

The L.G.A., 1929, sects. 119, 121 and 123—124 (*k*), is applicable as

(*u*) S. 55; 11 Halsbury's Statutes 1285.

(*b*) *Ibid.*, 1356.

(*d*) 31 Halsbury's Statutes 437.

(*f*) *Ibid.*, 363.

(*h*) 29 Halsbury's Statutes 285.

(*k*) 10 Halsbury's Statutes 960, 961, 962—963.

(*a*) 11 Halsbury's Statutes 1315.

(*c*) *Ibid.*, 1423, 1424.

(*e*) 23 Halsbury's Statutes 359.

(*g*) S. 61; *ibid.*, 365.

(*i*) 30 Halsbury's Statutes 647.

regards poor law officers transferred to the L.C.C. Under these last-mentioned provisions the council has made a special scheme for such officers who did not elect to remain under the Poor Law Officers' Superannuation Act, 1896. The provisions in public general Acts relating to the superannuation of officers in the service of poor law, education, asylums and mental deficiency authorities apply in certain cases which do not fall within the schemes made by the council under the Acts set out above. As to officers in the asylums and mental deficiency services, see L.C.C. (General Powers) Act, 1915, Part VII. (transfer to L.C.C. of powers of Visiting Committee) (*l*) and L.C.C. (General Powers) Act, 1925, sect. 82 (legalising certain superannuation allowances to officers on lunacy and/or mental deficiency work) (*m*). The Pensions (Increase) Acts are applicable to London.

The present scheme (based on the General Powers Acts) for new entrants is contributory (5 per cent.) The allowances consist of a lump sum payment on retirement and a pension, based on thirtieths and eightieths respectively of the average salary or wages and emoluments of the last five years on the whole period of service (whichever average be the greater). A scheme with somewhat similar benefits has been made for officers transferred under the L.G.A., 1929, who elect to adopt the scheme. The deduction here is $2\frac{1}{2}$ per cent., 3 per cent. or $3\frac{1}{2}$ per cent., according to the length of service on April 1, 1930.

There are a number of employees whose superannuation rights are based on former schemes and on superannuation provisions in public general Acts, *e.g.* asylums officers, transferred poor law officers, who have not adopted the scheme under the L.G.A., 1929.

The L.C.C. has made regulations under the Metropolitan Fire Brigade Act, 1865, dealing with the grant of pensions to firemen and their widows (see title LONDON FIRE BRIGADE). The Local Government and Civil Service (Superannuation) Rules, 1936, apply to the L.C.C. [48]

Metropolitan Borough Councils.—Of the twenty-eight metropolitan borough councils six have adopted the Local Government and Other Officers' Superannuation Act, 1922; two operate under the Superannuation (Metropolis) Act, 1866, above-mentioned; twenty have local superannuation Acts or provisions in the L.C.C. (General Powers) Acts. The city corporation operates under special powers under the City of London (Various Powers) Acts, 1912, 1922, 1931 and 1937. The L.C.C. (General Powers) Act, 1934, sects. 42—45 (*n*), deals with superannuation of vaccination and registration officers in the service of the borough councils and city corporation. For the calculation of, and arrangements as to certain superannuation allowances under the Local Government and Other Officers' Superannuation Act, 1922, see the L.C.C. (General Powers), Act, 1936, sect. 53 (*o*). [49]

(*l*) 11 Halsbury's Statutes 1330.

(*m*) *Ibid.*, 1376.

(*n*) 27 Halsbury's Statutes 425—429.

(*o*) 29 Halsbury's Statutes 289.

SUPERFLUOUS LAND

See CORPORATE LANDS.

SUPPLEMENTAL LIST

See VALUATION LIST.

SUPPLEMENTARY SCHEMES

See REGIONAL TOWN PLANNING.

SUPPLEMENTARY EXCHEQUER GRANTS

See GENERAL EXCHEQUER GRANTS.

SUPPLEMENTARY RATES

See RATES AND RATING.

SUPPORT OF ROADS

See ROAD PROTECTION.

SURCHARGE

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*See also titles : DISALLOWANCE ;
LOCAL AUTHORITIES EXPENSES ACT.*

Introduction.—The subject of surcharge is of great importance to members and officers of local authorities and particularly to the financial officers of those authorities. For the purpose of convenience, the subject must be considered in conjunction with the rather wider subject of disallowance, since disallowance is often a necessary preliminary to surcharge, although every disallowance does not of itself involve a surcharge.

Powers of disallowance and surcharge are possessed only by the district auditors appointed by the M. of H., and the powers therefore only arise in respect of accounts subject to such audit. The accounts and the local authorities subject to district audit are dealt with under the heading "Audit," to which reference should be made. Professional auditors and elective auditors, to whose audit the majority of borough councils are subject in respect of the bulk of their accounts, have no powers of disallowance or surcharge.

"Disallowance" means, broadly, the refusal of the auditor to allow an item of expenditure to stand in the accounts. This is not a mere privilege of the auditor but a specific duty laid on him by statute and case law. Every disallowance must obviously have some consequences, since, if an item is struck out of the accounts, the operation which gave rise to the original entry must be reversed. The exact consequences which follow disallowance depend on the actual circumstances. It may mean the recovery of sums actually disbursed, the writing back of items written-off, the mere transfer of an item from one account in which it is improper to another in which it is proper, or some other operation. In many cases, however, it is followed by surcharge on some person or persons concerned.

While disallowance concerns the local authority as a body, surcharge concerns individuals. Surcharge means, broadly, the same as "charge," the auditor having powers to charge direct to the person responsible items which have been disallowed owing to that person's action or which have been lost through his neglect. This again is a duty imposed by statute and subject largely to case law. There are special powers given to the auditor to recover sums surcharged and special rights of appeal against the surcharge which are dealt with later.

These special powers are obviously of great importance, both to the local authority, as represented by its elected representatives and its officials, and to the ratepayers whose money the authority disburses. An efficient district auditor will see that all irregular items are disallowed and charged on the responsible persons. When it is remembered that all local government electors have the right to direct the auditor's attention to items which they consider to be irregular by objecting thereto at the audit, the value of this power of disallowance and surcharge may be more fully appreciated. The provision has also value from the point of view of central control, since the M. of H., through the auditors, can ascertain the course being taken in the finances of the local authorities concerned. On the other hand, the power may prove irksome, because the local authority may be prevented from incurring expenditure on schemes or objects which may be desirable but not technically within their powers.

Before the subject is considered further, one aspect of the matter which frequently gives rise to misunderstanding may well be clarified. The district auditor, in conjunction with, and, in the case of boroughs, often in addition to, his audit is required to examine the local authority's claim to the majority of exchequer grants. In some cases where the grant is a proportion of approved expenditure (e.g. education and police grants), the auditor frequently is unable to allow certain items for grant purposes since they are not eligible for grant. This is frequently referred to as a disallowance, but it is emphasised that it is not a disallowance in the true legal sense of the word. The expenditure may actually be perfectly good and allowed to stand in the accounts but merely not allowed to rank for grant. It cannot therefore be a true disallowance and should be distinguished from the strict meaning of the term.

The meaning may perhaps be better understood when it is remembered that the auditor must certify his allowance of the accounts subject to any disallowances and surcharges. In other words, every item standing in the accounts at the completion of audit must have been allowed by the auditor, and any items illegally or fraudulently omitted must be surcharged and brought into account. [50]

General Statutory Powers of Disallowance and Surcharge.—The powers of surcharge and disallowance were previously contained in the P.H.A., 1875, and several other enactments, but are now consolidated in the L.G.A., 1933. Since the exact wording of the statutory power is of importance, the relevant section is reproduced below :

Sect. 228.—(1) It shall be the duty of the district auditor at every audit held by him :

- (a) to disallow every item of account which is contrary to law ;
- (b) to surcharge the amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditure ;
- (c) to surcharge any sum which has not been duly brought into

account upon the person by whom that sum ought to have been brought into account ;

- (d) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred ;
- (e) to certify the amount due from any person upon whom he has made a surcharge ;
- (f) to certify at the conclusion of audit his allowance of the accounts, subject to any disallowance or surcharge which he may have made ;

Provided that no expenses paid by an authority shall be disallowed by the auditor, if they have been sanctioned by the Minister.

(2) Any loss represented by a charge for interest or any loss of interest shall be deemed to be a loss within the meaning of this section, if it arises from failure through wilful neglect or wilful default to make or collect such rates or to issue such precepts as are necessary to cover the expenditure of the authority for any financial year (including any expenditure incurred in any previous year and not covered by rates previously levied or precepts previously issued) or to collect other revenues.

These provisions ought to be read in conjunction with those of sect. 226 (1) under which a local government elector for the area to which the accounts under audit relate may be present either personally or by a representative at the audit and make objection to the accounts before the auditor. Such an objection would not of itself increase the auditor's powers of disallowance or surcharge since he would still only be able to disallow or surcharge items which he ought in any case to disallow or surcharge in order to fulfil his statutory duties. On the other hand, of course, the auditor's attention may be directed to items or aspects of items of which he might otherwise be unaware.

Any person who has made an objection or any person who is aggrieved by a disallowance or surcharge made by the auditor may require the latter to state in writing the grounds on which his decision is based (sect. 226 (2)). In addition, as will be shown later, such persons have a right of appeal against the auditor's decisions (sect. 229).

It will thus be seen that the auditor's decisions on matters of disallowance and surcharge may be tested in a way which would be impossible but for the right of objection to the accounts, since no appeal against the auditor's allowance of the accounts can be made unless objection was taken at the audit (except of course in the case of persons directly concerned with actual disallowances and surcharges). [51]

Scope of Disallowance and Surcharge.—The scope of the auditor's powers of disallowance and surcharge must be interpreted in accordance with the statutory provisions given above and in conjunction with the general law of local government relating to the particular item disallowed or surcharged. Thus, while there have been a number of cases dealt with in the courts on particular items, in the course of which general rules of law have been considered, each item giving rise to a disallowance or surcharge will require to be treated on its merits and the actual facts of the case, together with the law attaching thereto. Much of the case law was considered in the light of statutes which have since been repealed or varied, but the broad aspects of the matter are discussed below on the basis of the separate and distinct powers possessed by the auditor. [52]

Disallowance of every Item Contrary to Law.—It may be said that “items contrary to law” fall into two main classes.

- (a) Items of expenditure which are in themselves illegal according to the general statute and common law.
- (b) Expenditure which is *ultra vires* as being incurred outside the powers and scope of a local authority. Such expenditure need not otherwise be in any way illegal, but will be contrary to the law of local authorities. In this connection it will be advisable to see the title *ULTRA VIRES* as well as the notes below.

The question of whether any one item of expenditure incurred is *ultra vires* must depend on the actual circumstances and facts of the individual case. The powers of local authorities are fairly well defined by law and unless any act, and consequently any expenditure incurred through that act, can be said to come within the powers of the authority under some enactment governing the authority, then the act will be *ultra vires* and the expenditure, therefore, contrary to law and liable to disallowance and surcharge. This is the circumstance which the auditor has to consider and, if he comes to the conclusion that the item is contrary to law, he has no alternative but to disallow, and surcharge (if need be) the item, even if in equity there is good reason why the item should be allowed. (As to the powers of the High Court and the Minister to grant relief, see paragraph 60.)

As already indicated, many of the cases which have been decided relate to enactments which have been either repealed or varied through subsequent legislation, but the general principles enunciated remain unaltered. Some of the instances are cited below.

(1) Expenditure on the maintenance of a vehicle for conveying councillors to inspect the borough was liable to be disallowed (a) as were excessive cab fares (b).

(2) *Ultra vires* expenditure which would otherwise be disallowed cannot be made allowable merely by being given an apparently lawful description (c).

(3) Payment of interest and repayment of principal of a bank overdraft, being not authorised by statute was previously held to be illegal (d). Such an overdraft is now, of course, authorised by the L.G.A., 1933, subject to sect. 228 (2) of that Act, but the case is none the less an indication of the court's strict interpretation of the law.

(4) Payments made in compliance with an order of a court cannot be disallowed by the auditor (e), but where costs were ordered a Divisional Court surcharged the amount, the proceedings having arisen from a resolution of the council passed in defiance of the advice of the clerk (e).

The doctrine of *ultra vires*, as affecting an auditor's powers, is, however, of wider extent than a mere consideration of whether the local authority has power generally to incur expenditure under a head of account. The statute requires “items of account” to be disallowed if contrary to law; the head of the account may itself be lawful; but the item making up the account may be contrary to law. Where the local authority has specific power to incur expenditure but owing to indiscretion in carrying out that power incurs expenditure which is in

(a) *R. v. Dolby, Ex parte Northfield* (1902), 66 J. P. 521; 33 Digest 41, 221.

(b) *R. v. Plumstead Board of Works, Times Newspaper*, June 2, 1870.

(c) *R. v. Newell*, [1898] 2 Ir. R. 530; 31 Ir. L. T. R. 8.

(d) *A.-G. v. Tottenham U.D.C.* (1909), 73 J. P. 437; 38 Digest 589, 1203; *A.-G. v. West Ham Corpn.*, [1910] 2 Ch. 560; 38 Digest 121, 373.

(e) *Davies v. Cowperthwaite*, [1938] 2 All E. R. 685.

excess of what is reasonable, such excess may be *ultra vires* and therefore contrary to law and disallowed. This doctrine, which had already been laid down (*R. v. Newell* (1908)), was considered and confirmed by the House of Lords in the case of *Roberts v. Hopwood* (f). At the same time, this principle will always require to be interpreted in accordance with the actual facts of the case; what may be considered to be *ultra vires* as excessive in one case might not be so considered in different circumstances.

In *Roberts v. Hopwood*, the auditor disallowed certain payments of wages to the extent to which they appeared to be unreasonable. The rates of wages paid were proved to be considerably in excess of the normal rates for the work involved. They had been substantially increased when the cost of living had risen, but were not reduced when the cost of living fell. The council passed a resolution that the rates should not be reduced. The rates fixed were arbitrary rates distinguishing between adults and others. It was not disputed that the council had power to fix wages rates, but it was considered by the House of Lords that the method adopted was not a reasonable exercise of the discretion thus given. This view seems to have depended largely on the arbitrary distinction which was not based on actual duties. The House of Lords upheld the disallowance and surcharge and considered that an auditor had the power to disallow the excess paid *ultra vires* and allow the sum which would be reasonable.

In the judgment some of the main principles to be followed by auditors were laid down. The whole purpose of the audit is to ensure wise and prudent administration, and to recover for the council's funds moneys which ought not to have been taken out of those funds. Each question is to be considered in the light of the local authority's statutory discretion on an individual matter in view of the general principle that a person who has discretion in a matter is bound to exercise that discretion reasonably. The term "as they think fit" is not one giving a local authority absolute discretion but means as they think fitting or suitable under the circumstances arising. The auditor has "to restrain expenditure within proper limits; his mission is to find out if there is any excess over what is reasonable," as well as what is perhaps within the narrow limit of statutory powers.

In a previous case (g) it had been held that the members of a local council were not to be surcharged because they did not accept the lowest tender. This was considered to be a matter of policy with which the court cannot interfere provided the local council has acted honestly.

The Court of Appeal, in *Re McGrath* (h), following the judgment in *Roberts v. Hopwood*, disallowed an amount paid as a lump sum in respect of salary for past years, on the grounds that, having already paid a salary which they thought fit, the authority could not later make such a further payment.

It will be seen that the whole matter is difficult, but, while an auditor cannot interfere with the local authority's policy, he is not precluded from disallowing items as contrary to law merely because the class or head of expenditure is, in general, legal, if it is considered that the authority acted unreasonably in the exercise of any discretion they may possess. [58]

(f) [1925] A. C. 578; 33 Digest 20, 83.

(g) *R. v. Roberts*, [1908] 1 K. B. 407; 33 Digest 40, 217.

(h) [1934] 2 K. B. 415; Digest (Supp.).

Surcharge on Persons Responsible for Authorising or Incurring the Expenditure.—These will normally be members of the council or committee of a local authority who themselves authorised or incurred an item of expenditure which is surcharged on them. The responsibility will normally depend on whether the member took part in the authorisation of the expenditure, *e.g.* by voting for it. Obviously if a member voted against the item, or was not present when a resolution or other authorisation was passed, he cannot be surcharged. But presumably if he were present but did not oppose the item he might be held to be responsible. [54]

Surcharge of Items not Brought into Account.—This covers all items not brought into account which are due to the local authority or any such items which are not correctly brought in. This should not give rise to difficulty, the point being that, once it is proved that any such item exists, the responsibility therefore must be fixed. [55]

Loss or Deficiency Due to Negligence.—Surcharge of amounts of any loss or deficiency upon the person by whose negligence or misconduct the loss or deficiency is incurred must depend on the whole circumstances of the case. It was stated in one case that negligence is associated with misconduct and must involve some element of moral culpability. It is not necessarily constituted by mere lack of, or errors of, judgment. This principle was upheld in *R. v. Roberts (k)*, in which it was held that the members of a committee were not bound to accept the lowest tender offered, since in making their selection it was not suggested that they in any way acted dishonestly or with culpable negligence. In the same case it was also stated that an auditor cannot judge the diligence or wisdom of an employee who is responsible to his employers. This would not, of course, prevent an employee from being surcharged for personal negligence, but appears to concern rather the giving of advice to the council on which they act. These remarks need to be considered, however, in the light of the later decisions in *Roberts v. Hopwood* dealt with in paragraph 53, since that also involved a question of negligence as interpreted by the courts.

The power generally is a wide one and would cover losses and deficiencies which do not come under any of the more specific provisions. There is, however, special provision made for the term "loss" to cover interest charges incurred or interest lost through the failure to the authority as a result of wilful neglect or wilful default, to levy sufficient rates or precepts to cover expenditure, or to collect income falling due. [56]

Position of Officials.—In considering the position of officials it may be as well to bear in mind the decision in the *Tenby Case (l)*. It was then held that the treasurer of a borough could not plead orders of the council as justification for making *ultra vires* payments, but that he stood in a fiduciary capacity towards the ratepayers. This, of course, was not a case dealing with disallowance or surcharge and the treasurer is in a special position.

In another case, dealing directly with surcharge, an officer was held responsible for failing to collect fees which were laid down by Act of

(k) See *ante*, p. 42.

(l) *A.-G. v. De Winton*, [1906] 2 Ch. 106; 33 Digest 77, 497.

Parliament, although the council gave him special directions not to charge those fees. [57]

Items which Cannot be Disallowed.—There are two instances in which the auditor is prevented from disallowing expenditure which he might otherwise not allow. Application may be made to the Minister for him to sanction expenditure and, where this is done, the auditor is specially prohibited from surcharging or disallowing the item (*n*). This power is intended to cover *bona fide* items of expense which cannot be said to be within the local authority's statutory powers, but which ought reasonably to be incurred, *e.g.* deputation expenses, contributions to societies, etc. The Minister's sanction does not legalise the expenditure, but merely prevents the auditor from making a disallowance.

The allowance on examination by the clerk of the peace to a county of any bill of costs incurred by the council of a county district within the county area is *prima facie* evidence of the reasonableness of the amount but not of the legality of the expenditure (*o*). [58]

Appeals against the Auditor's Decision.—Any person who is aggrieved by a decision of a district auditor on any matter with respect to which he made an objection at the audit, and any person aggrieved by a disallowance or surcharge made by a district auditor may, where the disallowance or surcharge or other decision relates to an amount exceeding five hundred pounds, appeal to the High Court, and may in any other case appeal either to the High Court or to the Minister (*p*).

There are thus two distinct classes of persons who are able to appeal against the auditor's decisions :

- (1) Any person who, being a local government elector, attended at the audit and objected to the accounts (*q*) and is aggrieved by the auditor's decision. It will be observed, therefore, that the only person who can take advantage of this is one who originally acted under the special provisions of sect. 226. A local government elector who did not do so could not subsequently appeal against the auditor's decisions. The matter on which the appeal is to be based must be "any matter with respect to which he made an objection at the audit" and therefore other points cannot be raised on appeal. There is nothing in the Act to require that the person who appeals must have a personal interest or concern in the matter, apart from being a local government elector.
- (2) Any person who is aggrieved by a disallowance or surcharge. This comprises an entirely different class of persons and the question of prior objections at audit does not apply. Normally those concerned will be those who suffer directly from the auditor's disallowance or who are directly surcharged. These would normally be councillors and officials.

Where the amount involved exceeds £500, the appeal must be made to the High Court, but in other cases the person concerned has the option of appealing either to the Minister of Health or to the High Court at his discretion (sect. 229 (1)). Obviously, if the amount is relatively small,

(*n*) L.G.A., 1933, s. 228.

(*p*) *Ibid.*, s. 229 (1).

(*o*) *Ibid.*, s. 242.

(*q*) *Ibid.*, s. 226 (1).

it will be preferable to take the matter to the Minister on the grounds of expense. In all cases, the powers and duties of the Minister and of the High Court are equal (see *infra*).

Where the appeal is made to the Minister, he may at any stage in the proceedings state any question of law for the opinion of the High Court in the form of a special case, and the High Court has power to direct the Minister to state such a special case for its opinion, but apart from these special powers the decision of the Minister is final (sect. 229 (3)). Thus where the appellant has exercised his discretion and appealed to the Minister, there is no power to appeal further to the court if the Minister's decision is an adverse one (except by case stated), and the appellant must therefore make his decision carefully, bearing in mind the question of cost. In the same way the powers of appeal to the Minister are lost when the appeal is made to the court (r).

The powers of the court or the Minister on such an appeal are to confirm, vary or quash the decision of the auditor and to remit the case to the auditor with such directions as the court or Minister may think fit to give effect to the decision (sect. 229 (2)). The decision must, of course, be based on the facts of the case and the legality of the auditor's action. Any question of relieving the person surcharged other than on those grounds falls to be considered under the separate powers given to deal with such cases (see *infra*). In other words, the point to be considered is whether the auditor's action is in accordance with the principles already referred to.

It may be noted that the appellant who chooses to go to the Minister is entitled to a personal hearing by a person appointed for the purpose by the Minister (sect. 231 (2)). [59]

Application for Relief from Surcharge.—As already indicated, the auditor's powers are, in effect, a statutory duty imposed on him which he must carry out. He is therefore bound to surcharge any item which ought to be surcharged in accordance with the strict interpretation of the law. He personally has no discretion and, even if he were convinced that the person responsible acted reasonably or in the belief that the action was authorised by law and ought not therefore in equity to be surcharged, he has no option but to carry out his statutory duty. No more can the court or the Minister on appeal take such matters into account when considering the appeal. Therefore, apart from the special provisions outlined below, the operation of the Act might act very unfairly on members or officials who acted in the way indicated since it is feasible that a beneficial or reasonable act could result in surcharge.

Special provision is, however, made by sect. 230 of the L.G.A., 1933, to enable relief to be given in appropriate cases. The person surcharged may apply to the tribunal to whom he has a right of appeal against the surcharge, *i.e.* either the High Court or the Minister (see paragraph 61), for a declaration that he acted reasonably or in the belief that his action was authorised by law, and the court or Minister, if satisfied that there is proper ground for so doing, may make a declaration to that effect. This application may be made whether or not an appeal against the surcharge had previously been made. The court or Minister may, if satisfied that the person surcharged ought fairly to be excused, relieve him either fully or in part from personal liability. The decision of the court or the Minister is final.

The procedure in the High Court is contained in the same rules as that for appeals. [60]

Appeals and Applications to the High Court.—The procedure to be followed on appeal against a decision of the auditor under sect. 229 (1) or on application for relief under sect. 230 (1) to the High Court is laid down in R.S.C., Ord. 55B, rr. 59—67. These rules are in accordance with the requirement of sect. 231 (1) of the L.G.A., 1933, that provision is to be made by rules of court for limiting the time within which appeals and applications may be made to the High Court, for securing that where an application for relief is made public notice of the hearing is given, and to enable any local government elector for the area concerned to appear at the hearing and object.

The appeal or application (r. 59) is made to the King's Bench Division by an originating notice of motion which must be served, before the expiration of six weeks after the date of the decision to which it relates, upon the district auditor for the time being in charge of the district in which the matter has arisen, and also on the local authority concerned, if the local authority is not itself the appellant (r. 61). The notice must state the grounds of the appeal or application and the date given for the hearing must not be less than twenty-eight days after the service of the notice (r. 62). A copy of the notice must be filed at the Crown office by the appellant or applicant within seven days after it is served on the auditor, together with an affidavit or affidavits setting out the reasons given by the auditor for his decision and the facts on which it is proposed to rely in the appeal or application. When this has been done, the motion is to be set down for hearing, and if this is not done either the local authority or the auditor can apply to the court for an order discharging the notice of motion and awarding costs, provided due notice is given to the appellant or applicant (r. 63). [61]

In the case of an application for relief (see under sect. 230 (1)) the following must be observed :

- (a) The applicant must cause notice of his intended application to be published once at least in each of two successive weeks in some newspapers circulating in the area concerned, one of which must be before the date on which a copy of the notice of motion is filed.
- (b) The notice must set out the nature of the intended application and state that any local government elector in the area may, on payment of the usual fee, obtain at a specified address copies of the notice of motion and of any accompanying affidavits, and may appear at the hearing and, whether he appears or not, may file an affidavit in opposition to the application.
- (c) At the hearing, any local government elector in the area may appear and be heard in opposition, or alternatively may transmit by post to the Crown office at least four days before the hearing a fee of five shillings and an unstamped affidavit giving the grounds of his opposition and facts bearing on the application. Any such affidavit is to be considered by the court. No costs may be ordered in such cases for the local government elector.
- (d) At the hearing, an affidavit must be filed proving compliance with (a) and (b) above (r. 64).

Copies of any affidavit filed by the appellant or applicant must be delivered to the authority and the auditor, and copies of affidavits intended to be filed by any person in opposition to the application must be delivered to the appellant or applicant at least four days before the hearing. Unless this is complied with, the affidavits may not be used, except by leave of the court (r. 65). Where an appeal and application are made together in respect of one surcharge, notices and affidavits may be combined (r. 66).

Where the auditor, upon whom notice is served, is not the auditor who gave the decision, the auditor on whom notice is served may appear in opposition as if he were the auditor who gave the decision (r. 67).

[62]

All evidence at hearings of appeals or applications is by affidavit unless the court direct that oral evidence shall be given (r. 60).

Case Stated by Minister.—An application for an order directing the Minister to state a special case is made to the King's Bench Division by way of an *ex parte* motion for a rule *nisi* supported by an affidavit ; but no such application will be entertained unless an application has previously been made to the Minister for a special case to be stated before his decision was communicated and the motion is made on one of the first three days on which the court sits for hearing *ex parte* motions next after the date on which the Minister's refusal to state a case was communicated (R.S.C., Ord. 55B, r. 68). The special case must be signed by the Minister or on his behalf and the Minister must deliver copies to the parties concerned and file the case at the Crown office. It is then set down for hearing in the same way as a case stated by justices (r. 69). [63]

Payments of Sums Certified to be Due.—The amount due from a person from whom any sum is certified to be due by the auditor is to be paid by that person to the treasurer of the authority within fourteen days after it has been so certified unless an appeal is lodged or an application for relief is made. Where either of the last two events occurs, any sum remaining due when the appeal is completed must be paid within fourteen days after the appeal or application is disposed of or abandoned or fails by reason of non-prosecution (L.G.A., 1933, sect. 232). The expression "within fourteen days after" does not include the day of certification, but means within the fourteen days following. [64]

Recovery of Sums Certified to be Due.—Sums certified to be due from any person by the auditor (*i.e.* under L.G.A., 1933, sect. 228 (1) (e)) are recoverable either summarily or otherwise as a civil debt on complaint made or action taken either by the auditor himself or under his direction (L.G.A., 1933, sect. 233 (1)). It is further provided that, in any proceedings taken, a certificate signed by the district auditor is to be sufficient and conclusive evidence of facts certified ; a certificate signed by the treasurer of the local authority concerned, or other officer who is responsible for keeping the accounts, that the sum due is unpaid is conclusive evidence of non-payment unless the contrary is proved ; and certificates purporting to be signed by the auditor or the treasurer or other officer, as the case may be, for either of these two purposes, are deemed to be signed by the person concerned, unless the contrary is proved (sect. 233 (2)).

Notwithstanding the provisions of the Summary Jurisdiction Acts,

proceedings for the recovery of sums due may be commenced before a court of summary jurisdiction at any time before the expiration of nine months from the date of the disallowance or surcharge, or in the event of an appeal or application for relief before the expiration of nine months from the date on which the appeal or application is finally settled, or is abandoned or fails by reason of non-prosecution (L.G.A., 1933, sect. 233 (3)).

Where the proceedings for recovery are taken under the Summary Jurisdiction Acts (see title SUMMARY PROCEEDINGS), the ordinary process thereunder will be followed; but the justices will not have discretion in the matter provided the statutory provisions are complied with; and a writ of *mandamus* could be obtained to enforce their statutory powers. The justices cannot go beyond the decision of the Minister or the High Court. Similar conditions naturally apply where the proceedings are taken otherwise than in a court of summary jurisdiction, *i.e.* in the High Court or the county court when the amount is within its jurisdiction. [65]

Expenses of Auditors and Others in connection with Disallowances and Surcharge.—The expenses incurred by a district auditor in the defence of any allowance, disallowance or surcharge made by him, so far as not recovered from any other party or as otherwise ordered by the court or the Minister, are to be reimbursed to him out of the fund to which the accounts subject to audit relate. The court or the Minister has also power to make orders for the payment of the expenses of any appellant or applicant or any party to the proceedings out of the fund to which the accounts subject to audit related (L.G.A., 1933, sect. 234 (1)). The power of the court or of the Minister is dependent on which of the two finally gives the decision.

The expenses of the auditor in any legal proceedings taken by him to recover sums due under a surcharge or incurred in such proceedings under his direction are, subject to the approval of the Minister, also to be paid out of the funds to which the accounts relate unless, and to the extent to which they are not, recovered from some other person. The expenses so paid are to include reasonable compensation to the auditor for time lost by him in the proceedings (L.G.A., sect. 234 (2)).

Thus the general position is that, unless the Minister or court otherwise decree, or the costs are recovered from some other person, the local funds bear the costs incurred in connection with appeals against allowances and surcharges and also in the recovery of amounts surcharged. [66]

Effect of Surcharge on Qualification for Membership of Local Authorities.—In addition to the normal liability of a person surcharged to pay the sum due, such a surcharge has the effect of disqualifying the person surcharged from membership of any local authority for five years from the date of the surcharge where the amount exceeds five hundred pounds; and any such person who is a member of a local authority is automatically suspended from his office (L.G.A., 1933, sect. 59 (1) (d)). It may be observed that the disqualification applies to membership of any local authority and not merely to membership of the authority in connection with which the surcharge was made.

The person surcharged may, however, be relieved of his disability by virtue of an appeal under the provisions of sect. 229 of the Act (see hereon paragraphs 61 and 62) where the amount of the surcharge is

quashed or varied so as to be reduced to five hundred pounds or less. A similar provision applies to any similar enactment relating to London.

The person disqualified may also be relieved of disability by virtue of a declaration made by the court that he acted reasonably or in the belief that his action was authorised by law under sect. 230 of the Act. This provision will apply irrespective of whether the person concerned is actually relieved of personal liability in whole or in part as a result of the declaration. [67]

General Position.—The following extracts from the Sixteenth Annual Report of the M. of H. for 1934–1935 indicate the extent to which the various powers of the auditor, the Minister of Health, and the court are exercised ;

“ One hundred and eighty disallowances and surcharges were reported by district auditors during the year as having been made at the audits of the accounts of local authorities. The total amount so disallowed and surcharged (other than sums disallowed merely as being charged to the wrong account) was £14,762. Sums amounting to £14,672 were refunded during the year in respect of disallowances and surcharges without appeals having been made or in consequence of remission being refused on appeal. This amount includes some sums disallowed or surcharged in the previous year. Twenty-eight appeals (or applications for remission) were decided by the Minister during the year. The district auditor's decision was quashed in four cases and was confirmed in all others in which application was not merely for remission. Remission was granted in thirteen cases, partly granted or partly refused in three, and wholly refused in eight. The total sum to which these appeals related was £2,485. Of this the sums remitted amounted to £1,504, those to which remission was refused to £599, and those to which the auditor's decisions were quashed to £382.

“ One local inquiry was held and three personal hearings were afforded in connection with appeals.

“ One thousand seven hundred and thirty applications for sanction to items of expenditure were granted (under L.G.A., 1933, proviso to sect. 228 (1)), and in 176 cases sanction was withheld.” [68]

London.—The law applicable to London does not differ. Part X. of the L.G.A., 1933, applies to London. [69]

SURFACE WATER DRAINAGE

See REPAIR OF ROADS ; STORM WATER DRAINAGE.

SURVEYOR, BOROUGH

See BOROUGH ENGINEER AND SURVEYOR.

SURVEYOR OF DISTRICT COUNCILS

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Preliminary.—In the past the duties of a district engineer and surveyor could be classed in two groups: (1) sanitary duties imposed when early efforts were made by means of local Acts to improve the sanitary conditions of towns; and (2) duties as to the construction and repair of highways inherited from the abolished office of surveyor of highways. Sect. 7 of the Towns Improvement Clauses Act, 1847 (*a*), which Act was passed for the purpose of shortening local Acts by the incorporation of its provisions with local Acts, required the persons responsible for the execution of a local Act to appoint a duly qualified person to act as a local surveyor of paving, drainage and other authorised works.

The office of surveyor of highways was first created by an Act of Parliament in 1555 (*b*), and these surveyors were required to direct "statute labour" on the roads and were liable to a penalty if they refused to serve. The Highway Act of 1773 (*c*) described the duties of these surveyors. The Highway Act of 1835 (*d*) laid down certain duties which form the basis of the present work of the surveyor as regards roads. The surveyors, or as they were sometimes called waywardens, were elected by the parish and subject to a penalty if they declined to serve. In boroughs and urban districts, sect. 144 of the P.H.A., 1875, provided that the council as the urban sanitary authority should exclusively execute the duties of the office and be surveyor of highways. In rural districts a similar transfer to the R.D.C. was made by sect. 25 of the L.G.A., 1894, but by sect. 30, L.G.A., 1929, county councils now exercise the office in relation to these districts. It follows that for many years surveyors of highways have not been elected under sect. 6 of the Highway Act, 1835. Sects. 6 to 18, 46 and 48 of the Act of 1835 were repealed, except as regards London, as from June 1, 1934, by the L.G.A., 1933, which came into operation on that date. By sect. 189 of the P.H.A., 1875, every urban authority (meaning the council of every borough and urban district) were required to appoint a fit and proper person to be surveyor. The councils were also allowed by the section to pay the officers appointed under it such reasonable salaries, wages or allowances as they might think proper, but every such officer was to be removable by the council at their pleasure. [70]

Appointment.—The L.G.A., 1933 (repealing as from June 1, 1934, sect. 189 of the P.H.A., 1875), by sect. 106 (1) requires every borough council to appoint a fit person as surveyor. A similar requirement

(*a*) 13 Halsbury's Statutes 584.
 (*c*) 9 Halsbury's Statutes 239.

(*b*) 2 & 3 Ph. & M., c. 8 (rep.).
 (*d*) *Ibid.*, 50.

applying to urban district councils and rural district councils is made by sect. 107 (1) of the Act, but as respects rural district councils, is qualified by the proviso to the sub-section in which it is stated that a R.D.C. need not appoint a surveyor.

By sect. 17 (2) of the M. of T. Act, 1919, the Minister may for the purposes of advances for the construction, improvement or maintenance of roads, by agreement with a council, defray half the salary and establishment charges of the engineer or surveyor who is responsible for the maintenance of roads, subject to the condition that the appointment, retention and dismissal of such engineer or surveyor, and the amount of such establishment charges are approved by the Minister. Such agreements exist in most cases where grants are made from the road fund. Any agreement made under this section is specially saved by sect. 124 (3) of the L.G.A., 1933. Borough and district surveyors have the same rights as other officers under the Superannuation Acts. [71]

Qualifications.—The only statutory qualification is that the surveyor should be a “fit person,” but the designing of important new works such as roads, bridges, sewerage and sewage schemes, swimming baths, housing schemes, etc., necessitate wide qualifications. For such work the surveyor needs a scientific training, and most surveyors now holding office have passed the examination of the Institution of Civil Engineers or the Institution of Municipal and County Engineers, or hold an appropriate university degree together with membership of one of the institutions above mentioned. In addition the surveyor often possesses the diploma of the Town Planning Institute or the Chartered Surveyor’s Institution. He should also be conversant with administration, the functions of the committees specially concerned with his department, and the organisation and control of indoor and outdoor staff, for he has not only a staff of clerks for costing pay sheets, records of stores and supplies and a technical indoor staff for the drawing office, but an outside staff of workmen organised under qualified assistants, inspectors and foremen. [72]

Dismissal and Removal from Office.—Under sects. 106 and 107 of the L.G.A., 1933, a surveyor holds office during the pleasure of the council, but these sections are subject to sect. 121 of the Act, which permits of an agreement between the council and the officer stipulating a specified period of notice to be given on either side before the appointment is terminated. This provision is generally regarded as being the result of *Brown v. Dagenham U.D.C. (e)*.

If an agreement is made with the M. of T. under sect. 17 (2) of the M. of T. Act, 1919, the council cannot dismiss the surveyor without first obtaining the approval of the Minister.

The L.G.A., 1933 (repeating sect. 193 of the P.H.A., 1875), provides that if it comes to the knowledge of an officer employed by the council of a borough or district, that a contract in which he has any direct or indirect pecuniary interest (not being a contract to which he himself is a party) has been or is proposed to be, entered into by the council, or any committee of the council, he must, as soon as practicable, give notice in writing to the council of the fact that he is so interested. An officer would do well to err on the side of caution and to give notice if he feels any doubt whether he has or has not an indirect pecuniary interest in a contract.

Sect. 123 (2) of the Act of 1933 forbids an officer, under colour of his office or employment, from exacting or accepting any fee or reward whatsoever, other than his proper remuneration.

The penalty for failing to give notice under sub-sect. (1) of sect. 123 or for a contravention of sub-sect. (2) of the section is a fine not exceeding £50, but the disqualification for holding or continuing in any office has been given up. [73]

SURVEYOR OF HIGHWAYS

See HIGHWAY AUTHORITIES.

SWEEPING OF ROADS

See SCAVENGING.

SWIMMING BATHS

See BATHS AND WASHHOUSES.

SWINE

See ANIMALS, KEEPING OF

SWING BRIDGE

See BRIDGES.

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See ALKALI, ETC., WORKS.

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See also titles :

DIRECTOR OF EDUCATION ;
EDUCATION ;

EDUCATION AUTHORITY;
EDUCATION COMMITTEE.

General.—There are no statutory requirements as to the qualifications, rights and duties of teachers as such, and it is permissible for anyone to open a school. The obligations of proprietors and teachers of private schools arise from their contractual relationships. As the teacher stands *in loco parentis* while the child is at school, he must exercise due care as to the health and well-being of the child. He has the right to administer punishment (a). There is no requirement as to the efficiency of the education given, though a local education authority may proceed under the attendance bye-laws against parents on the ground that their children are not receiving efficient education. Teachers in endowed schools, public schools and grammar schools, are subject to the provision of the various Endowed Schools, Public Schools and Grammar School Acts ; and while such schools remain independent of local education authorities, the teachers in them are not subject to control by such authorities. Local authorities can and do make requirements with respect to the number and qualifications, and method of appointment and dismissal, of staff, as a condition of aid to secondary schools. Teachers in schools approved for the purpose participate, however, in the benefits of the Superannuation Acts.

The first concern of the state with the teacher dates from the institution of the Committee of the Privy Council on Education in 1839, which appointed inspectors of schools and, in 1846, instituted a scheme for the apprenticeship of teachers, the payment of grants to the masters who instructed them, and gratuities to schoolmasters distinguished by zeal and success. On completion of apprenticeship, candidates were admissible by competitive examination for exhibitions (queen's scholarships) tenable at a training school. Certificates were awarded at the end of training, and untrained teachers were admissible to the Acting Teachers' Certificate Examination. Suggestions were made from 1858 onwards for the establishment of local authorities to deal with education, but it was not until the Education Act of 1870,

(a) See *post*, p. 64.

when school boards were set up, that local authorities employed or controlled teachers. The Education Act, 1902, placed the control under the councils of counties, county boroughs, and, in respect of elementary education, of certain other boroughs and urban districts. The counties and county boroughs were enabled to make provision for secondary education, and thus became employers of teachers in secondary schools; while all local education authorities for elementary education, in addition to becoming the employers of teachers in provided schools, were indirectly given control over the teaching staff in non-provided schools, through their powers of giving directions to managers and through the provisions as to the necessity for consent to the appointment and dismissal of teachers on educational grounds. See *infra*. [74]

Staff of Schools and Institutions.—A local education authority may appoint the necessary officers, including teachers, to hold office during the pleasure of the authority, and assign such salaries as they think fit, and may remove any of these officers, and the officers must perform such duties as may be assigned to them; but in the case of teachers, the powers of the authority are modified by provisions of the Act of 1921 and by regulations of the Board of Education (b). The words "during the pleasure of the authority" do not preclude a provision that the appointment shall not be terminated without reasonable notice (c). As most agreements provide that notice shall be given to terminate the appointment, the employment of teachers cannot generally be terminated without reasonable notice.

The authority for elementary education is required to maintain an approved establishment of suitable teachers for the area, and if called on, to satisfy the Board as to its distribution (d). In practice, the authority, with or without consultation with the Board's officers, proposes an establishment for the ensuing financial year, and the board may approve the proposal or may require a greater or smaller number of teachers. The teaching staff in special schools must be sufficient and suitable and such as the board require (e). [75]

A secondary school recognised by the board must have a teaching staff suitable and sufficient, in number and qualifications, for providing adequate instruction in each subject (f). Similar requirements exist for technical and training colleges. [76]

Every elementary school must be in charge of a head teacher who has general control and supervision of the instruction and discipline, and is required to take a definite and substantial share in the actual instruction. The head teacher is responsible for a suitable curriculum and syllabus framed with due regard to the organisation and circumstances of the school, and for preparing the time-table, and for providing access thereto to H.M. inspector. Except with the sanction of the Board of Education, the head teacher must be a certificated teacher. No clerk in holy orders or regular minister can be recognised as a teacher other than an occasional teacher in an elementary school. No person who is a member of a local authority, or is employed otherwise than in teaching by an authority, can as a rule be employed as part of the

(b) Education Act, 1921, s. 148 (1), (3); 7 Halsbury's Statutes 204.

(c) L.G.A., 1933, s. 121; 26 Halsbury's Statutes 370.

(d) Elementary Schools Code, p. 11; S.R. & O., 1926, No. 856.

(e) Special Service Regulations; S.R. & O., 1925, No. 835.

(f) Secondary School Regulations; S.R. & O., 1930, No. 387.

educational staff of that authority (*g*); but a co-opted member of an education committee is not a member of a local authority. A teacher is expressly permitted to be appointed as a member of an education committee (*h*); and a teacher is not prevented from being a member of a local education authority other than that by which he is employed. It is a condition of the recognition of a person as a teacher that a satisfactory medical certificate has been produced by him (*i*). Teachers are classified as certificated, uncertificated, or supplementary, or teachers of special subjects (*k*). Teachers are recognised as certificated who have undergone an approved course in a training college and passed the final examination; or have passed a final examination for a university degree, coupled either with the completion of an approved course of training or with a university teaching diploma and four years' approved teaching service; or hold the acting teacher's certificate (which is no longer awarded). Teachers from Scotland or the Dominions may be recognised by the board under certain conditions, and the board may recognise other teachers holding qualifications substantially equivalent to the ordinary qualifications. Uncertificated teachers must either have passed a first or second secondary school examination or the final examination for a university degree (*l*). With the exception of persons employed under the same authority before August 1, 1926, supplementary teachers may only be employed in rural schools, or in urban schools in charge of children under six years of age; but the total under any authority may not exceed the number so employed on April 1, 1924, nor may more than two be employed in any department. The inspector must be notified of all such appointments and has power to terminate them at any time. Persons not otherwise qualified may be employed in emergency or on special occasions, and a teacher in training is sometimes employed in this way. Young persons training for the teaching profession may be recognised as pupil or student teachers; and in rural schools, persons under eighteen years of age may be employed to assist as monitors, but must not be made responsible for the teaching of a class or part of a class. No child under obligation to attend school may be employed to assist in teaching or as attendant (*m*).

Recognition of a teacher lapses if, at the end of a probationary period of one year's teaching service in a public elementary school, the teacher fails to satisfy the board of his practical proficiency, but the probationary period may be extended in exceptional cases, or may be waived if the board are otherwise satisfied of the teacher's practical proficiency (*l*). The board satisfy themselves as to the practical proficiency of a teacher on reports from the local education authority and from H.M. inspector.

The board may on educational grounds recall or suspend the recognition of a teacher, but before taking action must use every available means of informing him of the grounds for the proposed action, and give him an opportunity for making representation on the subject (*l*).

No similar requirements are laid down for secondary schools in respect of head teachers, the qualifications of the staff, or training in teaching, but the general requirement enables the Board of Education

(*g*) Elementary Provisional Code, 1922, s. 11 (*c*).

(*h*) L.G.A., 1938, s. 94; 26 Halsbury's Statutes 356.

(*i*) Elementary Provisional Code, 1922, s. 11 (*e*).

(*k*) Elementary Schools Code; S.R. & O., 1926, No. 856.

(*l*) *Ibid.*, Sched. I.

(*m*) *Ibid.*, Sched. II.

to secure suitable staffing arrangements. Some local authorities themselves lay down a scale of staffing for secondary schools, whether provided, maintained or aided by the authority, *e.g.* one teacher for every twenty-two pupils, plus an additional teacher for every twenty-two pupils over the age of sixteen. [77]

The appointment of the staff of approved schools rests solely in the hands of the managers, but the appointment of the headmaster or headmistress is subject to the approval of the Secretary of State. Managers almost invariably consult the chief inspector of the H.O. before selecting candidates for the post of headmaster or headmistress. The appointment of principal officers in approved schools must be under minute of the authority or written agreement. A model form of agreement by the H.O. provides that the first year of appointment shall be probationary. [78]

The staff of a training college must be suitable and sufficient for the supervision of students and for adequate instruction in each subject of the course. The principal of a training college for women must be a woman. The staff must be employed under written agreements or minute of the authority, which must define the conditions of service, and indicate whether the teacher is employed full-time as a teacher. Except in the case of a university or university college, the staffing of a training college must be in accordance with approved arrangements. Similar requirements as to the dismissal or resignation of a teacher on grounds of misconduct or grave professional default, apply as in the case of secondary schools (*n*). [79]

Conditions of Appointment.—Teachers in elementary schools who are not appointed by the authority must be employed under written agreements. Appointment by an authority must be by minute of the authority or under written agreement. The agreement or minute must define the conditions of service and state whether the teacher is employed in full-time service as a teacher, but it is sufficient definition if the appointment is made subject to the Code and to the regulations of the authority (*o*). The agreement must not provide that the salary shall be reduced if any deduction is made from the grant. The agreements or minutes under which pupil teachers and student teachers are employed must be in accordance with the regulations for the training of teachers. Similar conditions attach to the appointment of teachers in special schools. A full-time teacher in an elementary school must not be required to perform any duties except such as are connected with the work of a public elementary school, nor to abstain outside school hours from any occupations which do not interfere with his school duties or his efficiency as a teacher (*p*). The Board of Education have advised that the supervision of children remaining on the premises between morning and afternoon school may be a duty connected with the work of the school; but that where such supervision is regularly required it should be expressly provided for in the agreement, and that if not so provided for, a teacher would not be bound to undertake it. [80]

The managers of non-provided elementary schools have the exclusive right of appointing teachers, subject to the control of the authority as to remuneration and as to directions with respect to number and

(*n*) Regulations for the Training of Teachers, 1934, Grant Regulations, No. 7; S.R. & O., 1934, No. 680.

(*o*) Elementary Schools Code; S.R. & O., 1926, No. 856.

(*p*) *Ibid.*, s. 17(c).

educational qualifications (*q*). Where a building grant is made to a non-provided school by a local education authority, all teachers, unless and until the grant is repaid, are in the employment and under the control of the local authority, but without prejudice to the provisions of sect. 29 (5) (c) of the Act of 1921 (*r*) in respect of reserved teachers. While a building grant remains outstanding the power of appointing all teachers lies with the authority, but before appointing a reserved teacher they must consult the managers, and unless the managers are satisfied as to the teacher's fitness and competence to give religious instruction, must not appoint him as a reserved teacher (*s*). See title **NON-PROVIDED SCHOOLS**.

Teachers in secondary schools recognised by the Board of Education must be employed under written agreements, or in the case of teachers employed by an authority, under a written agreement or minute of the authority. Such agreement or minute must directly or by reference define the conditions of service, and indicate whether the teacher is in full-time or part-time service (*t*). The articles of government may contain further conditions on the appointment of teachers. [81]

Tenure.—A teacher in an elementary school is subject to the regulations of the Board of Education as well as to the agreed conditions of his service. The Board of Education may declare a teacher to be unsuitable to teach on grounds of misconduct or grave professional fault, but before so doing the board will use every available means of informing the teacher of the charge against him and giving him an opportunity for explanation. The authority may not employ a teacher so declared unsuitable. In the event of a teacher being dismissed, or required to resign for misconduct or grave professional fault, the facts must be reported at once to the board (*u*). The dismissal of teachers in elementary schools has given rise to many questions of considerable difficulty which have formed the subject of cases in the courts. They fall into three categories: (1) those which are general in character, (2) those which arise out of the statutory provisions governing the appointment and dismissal of teachers in non-provided schools, and (3) those affecting the dismissal of married women teachers; but categories (2) and (3) are not mutually exclusive. Since, however, the special position with regard to teachers in non-provided schools arises mainly from a consideration of whether or not the dismissal is connected with the giving of religious instruction, or is on educational grounds, the questions involved in categories (1) and (2) tend to overlap. The local education authority can direct the dismissal of a teacher on educational grounds; and the consent of the authority for the dismissal of a teacher by the managers is necessary unless on grounds connected with the giving of religious instruction (*a*). As to whether the consent of the local authority is a condition precedent to a notice of dismissal being effective, opinions differ. On the one hand, where consent had not been obtained at the time of dismissal, BUCKLEY, J., held that it was not a condition precedent to dismissal, but when given, operated as a ratification of the dismissal, and that unless the authority

(*q*) Education Act, 1921, ss. 29 (2) (a), (b); 7 Halsbury's Statutes 143.

(*r*) 7 Halsbury's Statutes 143. These provisions relate to religious instruction.

(*s*) Education Act, 1936, s. 10 (1) (a), (b); 29 Halsbury's Statutes 125.

(*t*) Regulations for Secondary Schools, s. 10 (a), (b); S.R. & O., 1935, No. 679.

(*u*) Elementary Schools Code; S.R. & O., 1926, No. 856.

(*a*) Education Act, 1921, s. 29 (2) (a), (c); 7 Halsbury's Statutes 143.

intervened, the power of appointment and dismissal rested with the managers, and that the statutory requirements in regard to consent operated only between the managers and the local education authority and gave no right to the teacher (b). On the other hand, WARRINGTON, J., held that the fulfilment of the condition that the consent of the authority was necessary to dismissal was a part of the contract of employment, and that a teacher had a statutory right to the position held under the Act unless and until the requirements of the Act had been complied with (c). In a subsequent case, BUCKLEY, J., agreed with the contention that sect. 29 (2) (c) of the Act of 1921 was merely a condition of the maintenance of the school and did not confer rights on the teacher as between him and the managers. The Court of Appeal decided a similar case on other grounds and declined to give an opinion on the conflict of views (d). As to the question whether the grounds for a dismissal are educational or are related to the giving of religious instruction, since misconduct might affect the efficiency of a teacher in regard both to secular and religious instruction, difficulties of determination may arise. The incompatibility of the general conduct of a teacher with his position might amount to a valid reason for dismissal (e). The court has jurisdiction to determine whether a dismissal by the local education authority is made on educational grounds, although it cannot decide whether the grounds are, in fact, sufficient to justify the dismissal (f). As between the local education authority and the managers, the question may be referred to the Board of Education (g). For notice of dismissal by the managers to be valid without the consent of the authority, the grounds must be strictly connected with the giving of religious instruction in the school. Where the managers alleged dissatisfaction with the religious instruction given by a teacher in the school, but in reality dismissed her because she had ceased to be a member of the Church of England, it was held that the consent of the local education authority to the dismissal was necessary, and that in order to render valid a dismissal without the authority's consent, it is necessary not only that the managers should consider that the ground for dismissal exists, but that it should, in fact, exist (h). Where, however, a building grant has been given to a non-provided school by a local government authority, the authority have the exclusive power of dismissing teachers; but if the managers are of opinion that any reserved teacher has failed to give religious instruction efficiently and suitably, they may request the authority to remove him from employment as a reserved teacher in the school (i). Though the powers of an authority under sect. 148 (1) of the Education Act, 1921, are not governed by the same limitation as their powers to give directions to managers of non-provided schools, a notice of dismissal to a teacher in a provided school to be valid requires that the authority in giving notice should be actuated by motives and follow aims within their province as an education authority. The determining factor is whether

(b) *Young v. Cuthbert*, [1906] 1 Ch. 451; 19 Digest 555, 13.

(c) *Smith v. Macnally*, [1912] 1 Ch. 816; 19 Digest 605, 305.

(d) *Harries v. Crawford*, [1918] 2 Ch. 158, H. L.; 19 Digest 562, 45.

(e) See *Jones v. University of London* (1922), *Times*, March 22, 1922.

(f) *Mitchell v. East Sussex County Council* (1913), 109 L. T. 778, C. A.; 19 Digest 562, 47.

(g) Education Act, 1921, s. 29 (9); 7 Halsbury's Statutes 145.

(h) *Smith v. Macnally*, *supra*.

(i) Education Act, 1936, s. 10 (1) (c); 29 Halsbury's Statutes 125.

an authority had or had not "acted either *ultra vires* or so corruptly or *mala fide* or with such an alien motive or in pursuance of such an illegitimate aim as to render the notice a nullity" (*k*). In regard to the dismissal of married women teachers, the Sex Disqualification Removal Act, 1919 (*l*), is not inconsistent with a rule preferring appointments of a particular sex, and an authority in making provision to secure an orderly flow of entrants into the teaching service and to prevent the unemployment of young teachers trained at the public expense, is acting on educational grounds (*m*). Though the decided cases refer to elementary schools, the principles laid down are of general application. The practice of authorities as to the resignation of women teachers on marriage differs considerably.

If the engagement of a teacher in a secondary school is terminated either by dismissal or resignation, on account of misconduct or grave professional default, the facts must be reported to the board. If the board declare the teacher to be unsuitable for employment on such grounds, the teacher cannot be employed. Before taking action, the board use every available means to inform the teacher of the charges, and give an opportunity for explanation (*n*).

The articles of government of a secondary school, whether provided by a local education authority or not, may provide for a clause giving the right to an assistant master or mistress to be heard before being dismissed. The President of the Board of Education stated in May, 1911, in answer to a question, that in the case of schools aided but not provided by local authorities, a clause requiring the notice of dismissal to be confirmed by the authority would be incompatible with the freedom and responsibility of the governing body. [82]

Scales of Salaries.—The salaries of teachers in elementary and secondary schools, technical colleges and schools of art, and training colleges are based on the standard scales known as the Burnham Scales. The Standing Joint Committees composed of equal numbers of (a) representatives of the associations of authorities, namely, the County Councils Association, the Association of Municipal Corporations, and the Association of Education Committees and of the L.C.C., and of (b) teachers, were first constituted under the chairmanship of Lord Burnham in 1919, in order to provide for the orderly and progressive solution of the salary problem by agreement on a national basis. There is no legislative sanction behind the scales, and it is possible for an authority to fix salaries above or below the standard scales (*o*). In practice, however, the grant regulations of the Board of Education make the adoption of the scales universal. No grant is payable to an authority in respect of payments in excess of the standard scales except as provided below, and since 1932 the Board of Education has power to reduce the grant payable to an authority which pays less than the standard scales (*p*). Matters relating to the interpretation of the agreements are referred to committees of reference consisting of equal

(*k*) *Short v. Poole Corpn.*, [1926] Ch. 66, C. A.; Digest (Supp.); *Fennell v. East Ham Corpn.*, [1926] Ch. 641; Digest (Supp.).

(*l*) 10 Halsbury's Statutes 79.

(*m*) *Price v. Rhondda U.D.C.*, [1923] 2 Ch. 372; 19 Digest 604, 302; *Fennell v. East Ham Corpn.*, *supra*.

(*n*) Secondary School Regulations; S.R. & O., 1935, No. 679 (11), (12).

(*o*) Education Act, 1921, s. 148 (1); 7 Halsbury's Statutes 204.

(*p*) Elementary Education Grant Regulations, 1937; S.R. & O., 1937, No. 282, para. 7.

numbers of representatives of associations of local authorities and teachers meeting under the chairmanship of an officer of the Board of Education. [83]

Elementary Schools.—Four scales were in operation for teachers in elementary schools until 1936, when Scale I. was abolished. Scales are allocated to the various areas by the standing joint committees, and a local education authority may, by agreement with its teachers and with the consent of the standing joint committee, proceed from one standard scale to another; but scale IV. is confined to authorities in the London area, unless the adoption of the scale by other areas is confirmed by the standing joint committee. The scales provide for minimum salaries, annual increments, and maximum salaries, for certificated and uncertificated teachers. The salaries of certificated head teachers are based on the scale salaries of certificated assistant teachers together with a promotion increment, rising to specified maximum salaries, according to the grade of school. Schools are placed in five grades according to the numbers in average attendance, which is normally determined by the average of the three preceding financial years. In the case of new schools, and in the case of schools where considerable enlargement or re-organisation has taken place, the grading should be provisionally fixed on the estimated attendance for the first three financial years. The grading is reviewed whenever a new head teacher is appointed, a school re-organised, the accommodation increased by 20 per cent., or the number of the children increased by 20 per cent. owing to the specific action of the local education authority in transferring children from other schools. The general principle governing the salary scales of head teachers is that the scale established is a protected scale for a head teacher, whose salary may not be reduced so long as he renders efficient service under the same authority; but the scale ceases to operate if he leaves the service of the authority, or ceases to render efficient service, or, being in receipt of a protected scale higher than that appropriate to the grading of the school, refuses to transfer to a school of the grading appropriate to that of his protected scale. When, as the result of the appointment of a new head teacher, the grading of a school becomes lower than the protected scale of the retiring teacher, there must be a revision of the grading of some other school in the area whose head teacher is in receipt of a scale less than that appropriate to the grading of his school as normally determined (g). Provision is made for placing on the scale teachers in domestic subjects and handicraft and teachers in special schools. The authority has discretionary power to make additional allowances, within conditions prescribed by the Board of Education, to teachers undergoing college training for a period of less than two years, to teachers with special qualifications, to women teachers with special responsibility in mixed schools, to teachers suffering hardship arising from re-organisation or closure of schools, and for similar reasons. The prescribed sum on which the Board of Education will recognise expenditure on such allowances is 9*d.* per unit of average attendance plus £200 for each authority, but the board may specially sanction amounts in excess. The allowances are subject to general provisos that they shall not be used as, in effect, to alter the operation of the

(g) Board of Education Administrative Memorandum No. 162, 1937. Amended sect. 8 to Burnham Report.

standard scales; that they shall not create a class of schools in which service would be remunerated by special scales without reference to individual responsibilities; and that the total remuneration of teachers giving advanced instruction in elementary schools shall not exceed that of secondary school teachers of equal status.

As the result of a committee on salaries, teachers in approved schools are paid on the same basis as teachers in elementary schools. [84]

Secondary Schools, Technical and Art Schools.—Two scales are in operation, the higher being confined to the London area, that is, the area of L.C.C. and of such authorities within the metropolitan police area as have agreed with their teachers that the London scale is appropriate.

In secondary schools, the scale provides for maximum and minimum salaries and increments for graduate and non-graduate assistants. The minimum commencing salary for the headmaster of a secondary school is £600, and for a headmistress, £500, and authorities were recommended to formulate their own scales for head teachers on the basis of these figures. In 1987, the Burnham committee recommended that local authorities should frame such scales, and all but a few authorities have done so. Additional increments are added for courses of training. Furthermore, the authority has discretionary power to make allowances to teachers whose service is of exceptional value or who have high academic attainments, to senior mistress in mixed schools, and to teachers holding posts of special responsibility. Expenditure on such discretionary allowances will rank for grant up to a total based on an amount per head for each boy or girl between eleven and sixteen, and for each boy or girl over sixteen. The sum so allowed is known as the pool. The authorities have made very varying use of the discretion thus allowed them, some having exhausted the pool, and others making few allowances beyond the normal scale salaries.

Teachers in technical schools and schools of art are graded into principals, heads of departments, graduate assistants, non-graduate assistants and instructors. Special allowances may be made for Good Honours Degree or its technological equivalent, special responsibility, or exceptional qualifications or experience—the limits of such expenditure as will rank for grant being based on a capitation allowance for full-time students under sixteen, between sixteen and eighteen, and over eighteen, and in respect of part-time students on the aggregate number of student hours.

The salaries of teachers in training colleges are similar to, but not identical with, those for secondary schools, but the framing of a special scale is under consideration. [85]

Superannuation.—Since 1925, the superannuation of teachers has been on a contributory basis, the teacher and the authority each contributing 5 per cent. of the teacher's salary (*r*). Payments by the authority are recognised for grant. Contributing service may be either service in a grant-aided school, any grant-aided service in the employment of a local education authority approved by the Board of Education, or in a school approved by the Treasury as fulfilling the conditions laid down under sect. 18, para. vii., of the School Teachers (Superannuation) Act, 1918. The teacher is entitled to superannuation

(*r*) Teachers (Superannuation) Act, 1925, s. 9; 7 Halsbury's Statutes 325.

who is sixty years of age, and has been employed for not less than thirty years of recognised or qualifying service of which not less than ten years was recognised or contributory. In the case of married women, the period of thirty years may be reduced by not more than ten years during which she was absent from service while married. After ten years' service a pension is granted if a teacher has become permanently incapable through sickness of mind or body to serve efficiently. The superannuation allowances consist of an annual allowance of one-eightieth of the average salary during the last five years in respect of each completed year, but not exceeding one-half of the average salary, together with a lump sum equal to one-thirtieth of the average salary for each completed year. A death gratuity is payable after not less than five years' service, not exceeding one year's average salary. The compulsory retiring age is sixty-five.

A person who has been employed as a teacher for not less than three years in a capacity approved by the board, and is or has been employed by an education authority in full-time service involving to a substantial extent the control or supervision of teachers, is entitled to superannuation in respect of his services as an organiser, after the commencement of the Superannuation Act, as if he were a teacher employed in contributory service (s). [86]

Rights and Duties.—In general, the rights and duties of teachers are the same as those of other officers of local authorities. But a person who is disqualified from being a member of the council appointing an education committee solely by reason of holding office in a school or college aided, provided or maintained by the council, is not disqualified for being a co-opted member of the education committee. Teachers, including teachers in schools maintained but not provided by a local education authority, are disqualified from serving on the council of the local education authority (t). A teacher is not now prohibited from becoming the manager of a school, but the Board of Education have stated that it must not be presumed that the appointment of a head teacher as manager of his school is regarded as generally desirable. A teacher is required to conform to regulations laid down by the authority, and such regulations may deal with school organisation and the promotion of children, instruction (religious and secular), the social services, leave of absence for illness or other cause, time books, punishment, completion of statistics and the filling up of forms. Many authorities have adopted regulations governing the hearing of complaints against teachers. A teacher has not, however, any right to be heard before his engagement is terminated (u). Regulations governing leave of absence may specify conditions under which, and the causes for which, absence will be allowed, and may specify the length of time during which salary will be paid in whole or in part, whether the teacher's length of service and previous absences be taken into account or not. In the event of married women being employed, an authority may make regulations specifying periods before and after expected confinements during which the teacher shall not carry out her duties, but in default of such regulations, pregnancy is not in itself an illness,

(s) Teachers (Superannuation) Act, 1925, s. 14 (1); 7 Halsbury's Statutes 331.

(t) L.G.A., 1933, ss. 57—59; 26 Halsbury's Statutes 333—334.

(u) *Blanchard v. Dunlop*, [1917] 1 Ch. 165, C. A.; 19 Digest 562, 43.

nor can absence for this cause required by the regulation of the authority, necessarily be regarded as absence for illness (a). [87]

Corporal Punishment.—The right of a teacher to administer corporal punishment arises from the fact that he stands *in loco parentis* to the child, and consequently a teacher is entitled to use the ordinary means of punishment provided that it is moderate, is not dictated by a bad motive, is such as is usually administered in schools, and as the parent may expect his child to receive. It has been laid down that the ordinary authority of the head teacher in a public elementary school to inflict corporal punishment extends to the responsible teachers in charge of a class (b). Local authorities usually frame regulations governing the administration of corporal punishment. It has recently been contended that the teacher has a right at common law to administer corporal punishment, and that regulations modifying such right are invalid. There appears, however, to be no justification for such a restriction on the power of an authority to give directions to its servants. A punishment book must be kept in an elementary school, in which every case of corporal punishment inflicted in the school must be entered (c). The authority of a teacher by which punishment may be given extends not only to acts done in school, but on the way to and from school, and the power to inflict punishment in such circumstances is one of those delegated by the parents to the schoolmaster (d). The possible risk in a method of punishment such as caning on the hand does not make it criminal for a teacher to use it provided it is unobjectionably inflicted (e). A child should not be punished by detention, and still less by corporal punishment, for not doing home lessons. The Education Acts do not enforce preparation of lessons at home, and a teacher detaining a child for this cause is liable to be convicted for assault (f). Home lessons are regarded by the board as mainly matters of internal discipline. The local authority may, however, make regulations prescribing the amount and conditions of homework in schools maintained by it, and the report of the committee on homework suggests maximum periods of homework for children of different ages (g). [88]

Training of Teachers.—The training of teachers was one of the earliest subjects with which the central authority was concerned, and is governed by detailed regulations of the Board of Education (h). A training college includes a department in connection with a university, university college or other institution, and may be provided either by a local education authority or by an independent body. Students are either day students, or students resident in a recognised college or hostel or approved place of residence. Before recognising a training college, the board require to be satisfied that it is needed and will not compete unduly with existing training colleges, and the number of students

(a) *Davies v. Ebbw Vale U.D.C.* (1911), 75 J. P. 533; 19 Digest 601, 285.

(b) *Mansell v. Griffin*, [1908] 1 K. B. 947, C. A.; 19 Digest 600, 273.

(c) Elementary Schools Code; S.R. & O., 1926, No. 856; Board of Education Administrative Memorandum No. 51 (1927).

(d) *Cleary v. Booth*, [1893] 1 Q. B. 465, D. C.; 19 Digest 600, 275.

(e) *Gardner v. Bygrave* (1889), 53 J. P. 743, D. C.; 19 Digest 600, 274.

(f) *Hunter v. Johnson* (1884), 13 Q. B. 225, D. C.; 19 Digest 600, 281.

(g) Board of Education Educational Pamphlet, No. 110.

(h) Regulations for the Training of Teachers Grant Regulations No. 7; S.R. & O., 1934, No. 680.

must be approved by the board. In addition to recognised students, the board may admit to recognition for teaching diplomas those who have graduated at a university or university college, but the numbers so recognised are generally considerably less than those desiring to become teachers in elementary schools, and it is advisable for all students in universities who are not likely to obtain posts in secondary schools to obtain recognition before entering the university. In assessing the number of students, the board not only take into account the adequacy and suitability of the college, but the probable demand for teachers completing the course of training. A student must not be refused admission on other than reasonable grounds, and the fees to be charged must be satisfactory to the board. Maintenance grants are given in respect of students. In respect of resident students, they are available only for those at non-provided institutions, and are payable to the governing body for the benefit of the student. Maintenance grants for day students are only given where the board are satisfied that the student needs such a grant. Some local authorities make specific grants to intending teachers, and in some cases enter into agreements requiring the student, after training, to enter the service of the authority. Other authorities deprecate such conditions as tending to restrict the teacher's subsequent freedom to obtain wide experience and beneficial employment. Special grants for an undergraduate university student are available for students at a non-provided training college pursuing a four-year course, and are payable for three years while the student is under instruction at the university or university college. [89]

Teachers' Registration Council.—The Teachers' Registration Council (*i*) consists of a chairman and forty-eight elected members, and may be increased by the co-option of two additional members. The elected members must be registered teachers resident in England or Wales, and they are elected quinquennially. Twelve of the number represent university teachers, and thirty-six represent non-university teachers of various classes. The council determines the conditions of admission to the register. Before removing the name of any person from the register, the council must, if he so desires, consider the report of a sub-committee, which must include persons co-opted from outside the council. Teachers on the register have no special rights or privileges as compared with other qualified teachers in secondary or elementary schools. [90]

(*i*) See Teachers' Registration Council Order, 1926 ; S.R. & O., 1926, No. 1588.

TECHNICAL AND COMMERCIAL EDUCATION

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See also titles :

CENTRAL AND SENIOR SCHOOLS ;
CONTINUATION SCHOOLS ;
ELEMENTARY EDUCATION ;

HIGHER EDUCATION ;
SECONDARY EDUCATION .

Historical Survey.—In the early nineteenth century the desire of working men to obtain a knowledge of the branches of science underlying the trades in which they were employed led first to interest being taken in popular science lectures and later to the establishment of mechanics' institutes. By 1824 mechanics' institutes had been set up in most of the principal towns throughout the country and continued to increase in numbers until about the middle of the century. One branch of the activities of the mechanics' institutes was to provide systematic instruction in scientific principles. The failure of these courses is stated to have been due to the low standard of elementary education which was insufficient to provide a foundation on which to build scientific knowledge, and to some extent to the difficulty in finding suitable teachers for the subjects. The courses in mechanics' institutes indicated to employers the advantage of giving workers a scientific training, and some of our present technical colleges, *e.g.* Manchester, Keighley, Huddersfield and Birmingham, owe their origin to mechanics' institutes.

About the middle of the nineteenth century, an endeavour was made to deal with adult education from another angle by providing a more liberal education to the workers. Working men's colleges were founded. Most of these confined their courses to evening lectures, but in 1899 Ruskin College was founded with the object of training leaders in industry during short residential courses.

The Great Exhibition of 1851 did much to impress manufacturers in this country with the growing competition from their continental rivals and of the importance of science and art in industry. In 1853, a department of science was founded to unite with the existing department of arts to form the Department of Science and Arts under the control of the Board of Trade. Schools of science were opened in various parts of the country and were aided by grants from this department. In 1859, a system of grants based upon the results of the annual examinations set by the department came into force and for many years the grants paid to schools by the department depended solely on the results of these examinations.

The City and Guilds of London Institute was founded in 1878 by the London Livery Companies for the advancement of technical education. It established an examination system, issuing certificates to successful candidates, and paying grants to schools, until 1891, on the results of these examinations, in much the same way as the Science and Art Department.

General interest in technical education led to the setting up in 1881 of a Royal Commission on Technical Education. The report of the commission showed that the system in operation in this country compared unfavourably with that in continental countries and led to legislation being introduced to provide grants for the development of technical education.

The Technical Instruction Act, 1889 (*a*), empowered county and borough councils and urban sanitary authorities to raise a rate of one penny in the pound for technical and manual instruction. This source of income was supplemented by the proceeds of the Local Taxation (Customs and Excise) Act, 1890 (*a*), which taxed beer and spirits, the proceeds being known as "whiskey money." Many authorities set up technical instruction committees and there was a considerable development in the number of schools and in the range of instruction offered.

In 1899 the Board of Education was established and in 1902 the Education Act defined the spheres of local administration of elementary and higher education and these remain practically unchanged to-day.

From 1902 to the present time there has been a steady development in technical education. During the period 1902 to 1911 the control of technical institutes by committees appointed by local education authorities, the appointment of principals to supervise the work of the institutes, and the inspection of classes by the staff of the Board of Education having expert knowledge of the requirements of industry and commerce, led to an increase in the range of subjects of instruction and to the grouping of subjects to form courses. The bulk of the instruction is still given to students enrolled in evening classes, but there is a growing demand for full-time junior and senior courses in technology, commerce and art. Although few students engaged in commerce are released from employment during the day to attend part-time courses, the number of students released from industry for this purpose is increasing. The number of students in attendance at technical, commercial and art classes during the session 1934-35 is given in a report of the Board of Education (*b*) as 890,000 students in evening classes; 10,000 in senior full-time day courses; 28,000 in junior full-time courses; 43,000 in part-time day courses and 62,000 in art schools.

In Circular 1444 (January, 1936) issued by the Board of Education, local authorities were asked to review the provision for technical education in their areas and submit proposals for improvement. These proposals have led to a large number of new technical institutes being planned, which will involve a capital expenditure of £12,000,000 in the next few years. [91]

Types of Schools.—A list of the more important institutions recognised by the Board of Education is published by H.M. Stationery Office (*c*).

(*a*) Repealed.

(*c*) List III/1935, at 1s. 3d.

(*b*) "Education in 1935."

The courses available in technical and commercial institutions and schools of art may be subdivided into junior full-time, senior full-time and junior and senior part-time (day and evening).

The schools providing junior courses are junior technical schools, which prepare pupils for entry into industrial or commercial employment; junior housewifery schools, which give domestic training; and junior art schools, which prepare for entry into artistic trades. The age of admission to these schools is from thirteen to fourteen years of age, and the courses are of two or three years' duration. The schools, in addition to giving a vocational training, continue the general education of the pupils. There are also a few junior schools of nautical training, which prepare boys of thirteen to fourteen years of age, during a one or two years' course, for employment at sea. These junior schools may form a department of a technical college or school of art or be independent institutions.

Senior full-time day courses in technology generally extend over two to four years and the normal age of admission is sixteen. The majority of students are drawn from secondary schools, but an increasing number are now coming from junior technical schools. These courses lead to the award of ordinary national diplomas after two years, to higher national diplomas after four years, or to university degrees after three to four years. Some of the larger colleges also issue their own diplomas. An institution offering full-time day courses of this standard and part-time day and evening courses is usually recognised by the Board of Education as a college for further education.

Senior full-time day courses in commerce are usually limited in technical or commercial institutes to one year courses. The age of admission is sixteen or over.

Senior full-time art courses related to industrial, commercial or other requirements in various branches of arts and crafts extend over two to four years. The instruction is usually highly specialised. Some of the larger schools of art provide courses for the training of teachers of art.

In circular 1432 (October, 1933) issued by the Board of Education, consideration is given to the desirability of more systematic co-ordination of art instruction to enable schools of art to increase the effectiveness of their contribution, both nationally and locally, to industrial and commercial efficiency. It is proposed to reclassify art institutions under (a) art colleges to provide the most advanced work in fine art, industrial design and craftsmanship, paying special attention to the artistic needs of the staple industries of the district, (b) art schools to serve the needs of a locality and act as feeder centres to art colleges, and (c) art classes to be held in other institutions but affiliated to art schools. [92]

Buildings and Equipment.—In 1935, the Board of Education carried out a survey of the accommodation for technical, commercial and art instruction. The survey showed that although satisfactory accommodation was provided in some areas there were many in which the accommodation was inadequate, and new institutes were urgently required. Circular 1444 (January, 1936) issued by the Board of Education gave indications of the necessity for the development of technical education, and local education authorities were invited to submit programmes for the reconstruction or extension of existing buildings and proposals for new buildings. Many authorities have

submitted extensive programmes and a marked development of accommodation is expected.

Very little literature is available in this country on buildings and equipment of Technical Institutes, but in 1935, a report was issued on "Technical College Buildings, their Planning and Equipment" by a joint committee of the Association of Technical Institutions and the Association of Principals in Technical Institutions with the help of representatives of the Royal Institute of British Architects, the Institute of Builders, and a member of the staff of the Board of Education. This report deals with the general planning of buildings and the accommodation and equipment required for the teaching of art; biology; building; cabinet making; chemistry; commerce; domestic science; mechanical, electrical, automobile, aeronautical and gas engineering; leather industries; metallurgy, mining and geology; pharmacy; physics; printing; and textiles.

Each institute requires special consideration as its main function is to cater for the industries in the area; but modern buildings are designed to give adequate accommodation for class rooms, laboratories, drawing offices, administration, staff rooms, students' common rooms, dining rooms, libraries and a large central hall, in addition to workshops, craft rooms and specialist rooms for industrial and art instruction. Special attention is also given to physical training and gymnasia, and playing fields are now generally provided.

The equipment of a technical institute requires careful consideration. Much of the laboratory and workshop equipment is expensive and if it is to command the respect of local industries it must be kept up to date. Firms, associations of employers, and makers of machinery often make very generous gifts of expensive plant and equipment; but even then local authorities find it expensive to meet the high cost of the initial equipment and of systematic replacement as apparatus and machinery becomes obsolete. [93]

Teaching Staff.—The teaching staff may be divided into two groups, those responsible for full-time day instruction and those responsible for evening classes. The full-time day staff required for teaching general educational subjects in junior schools or for science, mathematics and languages in junior and senior departments are usually university graduates who may or may not have had industrial experience. The remaining full-time day staff responsible for vocational subjects are generally selected on account of their technical training or trade experience, and relatively few have university degrees. The teachers of evening classes in junior courses are usually elementary or secondary school teachers. The senior evening classes are taught by secondary or technical teachers and a large number of part-time teachers employed in industry or commerce during the day.

There are no recognised training colleges for technical teachers, and short *refresher* courses, usually held during vacations, are organised by the Board of Education and by some local education authorities.

One of the difficulties in connection with staffing is in keeping teachers who are responsible for vocational subjects abreast of modern industrial requirements. The teachers themselves do their best by constant reference to technical publications and occasional visits to works, but these methods are not always satisfactory. Suggestions have been made that such teachers should be released periodically from teaching service to enter industry for three to six months; but

difficulties of finding substitutes and of meeting conditions for pensionable service have prevented the scheme being put into operation. [94]

Examinations.—Examinations have always played an important part in technical education. In the nineteenth century, they were used as a means of assessing, for grant purposes, the work done in technical institutions. They are now important (1) in providing a stimulus to students whose attendance at classes is mainly voluntary; (2) in assisting teachers to draw up suitable syllabuses; (3) in the classification and promotion of students; and (4) in assessing the value of the work done in class.

The varied nature of the courses available in technical institutes has led to a complex system of examinations being established. The examinations may be subdivided into five main groups :

- (a) Those established by the governing bodies of the institutes or by single local education authorities, *e.g.* Kent and the West Riding of Yorkshire.
- (b) Those conducted by regional examining unions, *e.g.* The Union of Lancashire and Cheshire Institutes, the East Midland Educational Union, the Northern Counties Examination Council and the Union of Educational Institutions.
- (c) Those of external examining bodies, *e.g.* City and Guilds of London Institute, Royal Society of Arts, London Chamber of Commerce, National Union of Teachers, etc.
- (d) Those conducted by professional bodies requiring examination success for membership, *e.g.* Institution of Mechanical Engineers, Institute of Bankers, Chartered Institute of Secretaries, Auctioneers' and Estate Agents' Institute, Surveyors' Institution.
- (e) National Certificate and Diploma Examinations.

In addition, students in technical institutes may prepare for internal or external degrees of universities, competitive entrance examinations for the civil service, Royal dockyards, Royal Navy and Royal Air Force, or for Royal and Whitworth scholarships and Board of Education art scholarships.

A detailed description of the various examinations is impossible within the scope of this work; but the development of national certificate schemes is worthy of comment. In 1920, the Institution of Mechanical Engineers, in co-operation with the Board of Education, drew up a scheme whereby it is possible for a student to obtain a certificate of national value, based upon syllabuses which allow reasonable latitude for each institute to meet local industrial requirements and taking into account the homework, class work and laboratory marks awarded to the student during the course. In order to obtain recognition, each institute must submit to the Board of Education detailed syllabuses for each subject of the course which, in general, involves attendance on three evenings per week for three years for the award of the ordinary national certificate and on three evenings per week for a further two years for the award of the higher certificate. Examinations are held at the end of each year; the first and second year examination papers of the ordinary certificate and the first year of the higher certificate are set and marked by the teachers in the institute. The final examination papers in both ordinary and higher

certificates are set and marked by the teachers, but moderated and assessed by examiners appointed by the Institution of Mechanical Engineers and the Board of Education. The scheme has met with marked success and has overcome many of the disadvantages of preparing candidates for purely external examinations.

Similar schemes are in operation in conjunction with the Institute of Chemistry (1921), the Institution of Electrical Engineers (1922), the Institution of Naval Architects and Worshipful Company of Shipwrights (1926), the Institute of Builders (1929), and the Textile Institute (1934). The Institute of Gas Engineers (1923) drew up a scheme for gas engineering and gas supply which is modelled on national certificate lines but differs in detail.

An endeavour was made to draw up a national certificate scheme in commerce, but it was not possible to find a body or association representing the interests of all branches of commerce. Since 1935 an endorsed certificate scheme in commerce has been in operation. This is similar in detail to the ordinary national certificate schemes in engineering, *i.e.* the scheme involves a three years' course, and homework and class work marks are considered, but as there is no professional body the certificates are issued and endorsed by the Board of Education.

For further information see "Report of the Departmental Committee on Examinations for Part-time Students," 1928, and "Education in 1935," both published by H.M. Stationery Office. [95]

Co-operation in Technical, Commercial and Art Education. (a) *Between Authorities.*—It is generally agreed that the provision of technical and commercial education should be planned on a regional, if not on a national basis. The industrial regions seldom coincide with the areas of local education authorities, so that, if technical and commercial institutes are to provide trained personnel for entry into industry and commerce and to continue the technical education of those already employed, the number of institutions and the scope of the instruction offered must bear a close relationship to the industries to be served. Co-operation between adjoining local authorities has existed for some time. The Yorkshire Council for Further Education includes representation of all the local education authorities for higher education within the county of Yorkshire. Advisory committees have been established to consider the educational requirements of the principal industries in the area, and with the assistance of these advisory committees there has been a correlation of syllabuses, agreement on courses to be established in each institute, arrangements for the transfer of students from junior to senior and senior to advanced courses and an endeavour to provide an adequate system of further education to meet all the industrial requirements of the area. Similar councils have been established in South Wales and Monmouthshire (1934), in the West Midlands (1935), and in the Manchester area (1936). In the Greater London area, conferences are attended by the education officers of the L.C.C. and of neighbouring authorities, at which proposals for new courses or new buildings and other developments are freely discussed to avoid overlapping in the provision of technical and commercial education in the densely populated area in and around London.

One of the problems in regional co-operation is the payment for "extra area" or "out county" students attending technical and commercial schools. The tuition fees paid by students represent only a fraction of the cost of providing the education and some arrangement

must be made by the receiving authority whereby the difference between the cost of providing the education and the fee paid by the student is met by the sending authority. The methods of obtaining this payment differ in various parts of the country. In some cases the sending authority pays the receiving authority a lump sum each year so that all students from the sending authority's area may be admitted to the receiving authority's institutes on payment of the ordinary tuition fees. In other cases a capitation fee is paid by the sending authority on each student, the amount of the fee depending upon the type of course the student attends. In other instances the sending authority will accept no responsibility for the payment of extra area or out county fees if reasonable provision is made by the sending authority in its own institutes. Other receiving authorities grant reduced out county fees to a student working in their area but residing in another. One effect of these financial adjustments between adjoining authorities is to restrict the free flow of students to courses which may be best suited to their needs. [96]

(b) *With Industry and Commerce.*—The success of a technical institute depends upon the co-operation which exists between the institute and local industries. A number of governing bodies rely upon the principal and the heads of departments to keep in touch with local employers, first by placing boys and girls from the junior and senior full-time courses in satisfactory positions on the completion of their courses of instruction, and secondly, by providing part-time courses which will meet the requirements of employees engaged in local industry and commerce. In general the relationship is good and employers on many occasions have expressed their appreciation of the training given in technical and commercial schools.

As a rule, the number of students attending day courses in a technical institute is only a fraction of the number attending evening courses. This means that there is room to spare during the day and congestion in the evening. Endeavours have been made to persuade employers to release employees during the day for two or more half-days per week in order to distribute more adequately the day and evening "load." Some progress has been made, but the Board of Education returns (see "Education in 1935," p. 56) for the session 1934-35, show that the total number of employees attending part-time day classes was only about 3 per cent. of the total number of part-time students in attendance at institutes recognised under regulations for further education. Where part-time courses are in operation, the examination results show that students attending these courses are much more successful than those obtaining instruction by attendance at evening classes. Very few students engaged in commerce are granted permission to attend part-time day courses. Attendance at part-time day courses is almost universal in continental countries and appears to be a development worthy of consideration in this country.

In addition to the co-operation established between the principal and local employers, some governing bodies or local committees set up advisory committees on which representatives of local employers, employees and the governing body serve. In many cases such committees have been the means of establishing close co-operation between the institute and local industry, but their success depends very largely on the personnel.

Finally, many external examining bodies, of which the City and Guilds of London Institute is an example, have set up national advisory

committees for each subject or group of subjects in the examination system. These committees have prominent representatives of industry as well as teachers and administrators as members, and are rendering excellent service in drawing up syllabuses to meet industrial requirements. [97]

London.—The L.C.C. are the sole higher education authority in London (Education Act, 1921, sect. 3, 170 (21), (22)(d)). Under the London Government Act, 1899, sect. 19 (3)(e), and Education Act, 1921, s. 170 (21), the Woolwich borough council are authorised to contribute towards technical education. A polytechnic towards which the L.C.C. contribute and towards which the Woolwich borough council by virtue of these powers also contribute, is maintained at Woolwich for instruction in technical, commercial, art and other subjects. The contributions made by the Woolwich borough council are raised as part of the general rate over the parish of Woolwich (L.C.C. (General Powers) Act, 1931, sect. 55(f)). As to provisions of the Education (London) Act, 1903 (g), relating to limitation or qualification of governors or managers of institutions aided by the L.C.C., see title HIGHER EDUCATION.

Technical and commercial education is given in the L.C.C. central schools, continuation schools, evening institutes and a number of technical institutes, schools of art and day trade schools maintained by the council. In addition, grants are made to many other educational institutions offering technical, scientific or art instruction. A scheme has been adopted by the council for the co-ordination of such instruction in polytechnics, technical institutes and evening institutes. The council's maintenance grants to polytechnics take the form of block grants including Board of Education grants for a period of three years. The grants in respect of technical departments of institutions for higher education provide for free places for the council's scholars. Sect. 123 of the L.C.C. (General Powers) Act, 1937 (h), empowers the L.C.C. as local education authority for higher education to provide, furnish, equip, maintain and carry on a hotel, in conjunction with or as part of the Westminster Technical Institute, for the purpose of providing instruction in all or any branches of the hotel industry. [98]

(d) 7 Halsbury's Statutes 131, 214.

(f) 21 & 22 Geo. 5, c. 59.

(h) 30 Halsbury's Statutes 648.

(e) 11 Halsbury's Statutes 1236.

(g) 7 Halsbury's Statutes 126.

TELEGRAPHS

See POSTAL, TELEGRAPH AND TELEPHONE SERVICES ; RATING OF SPECIAL PROPERTIES.

TELEPHONES

See POSTAL, TELEGRAPH AND TELEPHONE SERVICES ; RATING OF
SPECIAL PROPERTIES.

TEMPORARY AND MOVABLE BUILDINGS

See TENTS, SHEDS AND VANS.

TEMPORARY LOANS

See BANKERS' AND OTHER OVERDRAFTS.

TENEMENTS

See FACTORIES AND WORKSHOPS ; FLATS ; SLUM CLEARANCE.

TENNIS COURTS AND BOWLING GREENS

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TENTS, SHEDS AND VANS

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See also titles :

BUILDING BYE-LAWS ;	TOWN PLANNING ;
FRUIT AND HOP PICKERS ;	VAGRANCY.
NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS ;	

Introduction.—Local authorities are empowered to control the erection and use of (a) tents, vans, sheds and similar structures, and (b) temporary buildings, in accordance with the provisions of the P.H.A., 1936.

It is not always an easy matter to determine whether a particular erection is a "building" subject to the provisions of the building bye-laws (a), and it was held that a structure might be both a "building" under the P.H.A., 1875, and a "temporary building" under the P.H.A. Amendment Act, 1907 (b). A caravan on wheels was held not to be a temporary building (c) under the repealed sect. 27 of the Act of 1907 (d). In a second case (e), however, a railway carriage still on wheels, and converted into a dwelling by the erection of partitions, was held to be a temporary building. Where two vans were occupied as a dwelling-house for two years, then being removed whilst a low wall was built, and afterwards returned so as to be partly on the wall and partly on blocks of wood, a chimney stack also being built into the side of one of the huts, it was held that the erection was a new building subject to the building bye-laws (f). In all these three cases the court held that the question was one of fact, and refused to interfere with the decision of the justices. In another case (g), an old railway carriage was converted into a dwelling-house by altering the interior arrangement. It was held that the alteration constituted a new building subject to the building bye-laws and that the local authority were entitled to pull down the whole structure and not only the work done in converting the railway carriage into a dwelling.

(a) See title BUILDING BYE-LAWS.

(b) *Andrews v. Wirrall R.D.C.*, [1916] 1 K. B. 863 ; 38 Digest 183, 233.

(c) *Rodwell v. Wade* (1924), 23 L. G. R. 174 ; 38 Digest 187, 260.

(d) 13 Halsbury's Statutes 919.

(e) *Keeling v. Wirrall R.D.C.* (1925), 23 L. G. R. 201 ; 38 Digest 188, 261.

(f) *James v. Tudor* (1912), 77 J. P. 130 ; 38 Digest 180, 214.

(g) *Hanrahan v. Leigh-on-Sea U.D.C.*, [1909] 2 K. B. 257 ; 38 Digest 182, 224.

The P.H.A., 1936, clarifies the position somewhat, sect. 269 (*k*) containing special provisions relating to "moveable dwellings", which include any tent, van or other conveyance on wheels or not, and any shed or similar structure, being a tent, conveyance, or structure which is used either regularly or at certain seasons only, or intermittently, for human habitation, provided that the expression does not include a structure to which the building bye-laws of the local authority apply.

Generally speaking, therefore, erections coming within the definition of "moveable building" are dealt with under sect. 269, P.H.A., 1936 (*k*), while the former s. 27 of the P.H.A. Amendment Act, 1907, is not reproduced in the Act of 1936, but its ground is partly covered by sect. 53, P.H.A., 1936 (*l*). There is not, however, a perfectly clear distinction between the two classes of structure, and in some cases such erections may indeed be "buildings" (*m*) subject to the general building bye-laws. In all cases, therefore, the full facts should be carefully considered in order that the correct procedure be followed. In this connection, reference should also be made to the provisions of sect. 90 (2), P.H.A., 1936 (*n*), which defines the operations which are deemed to be the erection of a building, but it should be noted that so far as building bye-laws are concerned, the bye-laws themselves determine the applicability of the statutory definition. The model bye-laws issued by the M. of H. (*o*) follow exactly the wording of the statute, but it is open to an individual authority to vary the bye-law, subject to the approval of the M. of H., if they so desire. [99]

Tents, Vans, Sheds and Similar Structures.—Although local authorities have had power to control tents, vans, sheds and similar structures for many years (*p*), it is only within comparatively recent times that extensive colonies of these erections have arisen, many having developed from purely week-end holidays huts, to permanent habitations. The law relating to these structures is contained mainly in sects. 268 and 269 of the P.H.A., 1936 (*q*), except that in certain areas similar provisions contained in local Acts continue in operation unless repealed by the Minister of Health upon the application of the local authority (*r*). [100]

Nuisances in Connection with Tents, Vans and Sheds.—Part III. of the P.H.A., 1936, relating to nuisances (*s*), applies to any tent, van, shed or similar structure used for human habitation

- (a) which is in such a state, or so overcrowded, as to be prejudicial to the health of the inmates; or
- (b) the use of which, by reason of the absence of proper sanitary accommodation or otherwise, gives rise, whether on the site or on other land, to a nuisance or to conditions prejudicial to health.

(*k*) 29 Halsbury's Statutes 494; and see *post*, p. 78.

(*l*) *Ibid.*, 364; and see *post*, p. 82. For a full explanation of s. 53, see Lumley's Public Health (11 ed.), pp. 159 *et seq.*

(*m*) The expression "building" is not defined and various cases have been before the courts under the repealed s. 157, P.H.A., 1875, as to which see Lumley's Public Health, 11th ed., Vol. I., pp. 197 *et seq.*

(*n*) 29 Halsbury's Statutes 392.

(*o*) M. of H. Model Bye-laws, Series IV., "Buildings."

(*p*) See Housing of the Working Classes Act, 1885, s. 9; 13 Halsbury's Statutes 808, and P.H.A., 1925, ss. 43, 50; 13 Halsbury's Statutes 1133, 1137.

(*q*) 29 Halsbury's Statutes 492, 494.

(*r*) P.H.A., 1936, s. 269 (9); 29 Halsbury's Statutes 496.

(*s*) See title NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS.

Such conditions are "statutory nuisances" within the meaning of sect. 92, P.H.A., 1936 (*t*), and in dealing with them, the expression "occupier" in relation to a tent, van, shed or similar structure includes any person for the time being in charge thereof (*u*). Where a nuisance under paragraph (*b*), *supra*, is alleged to arise, wholly or in part, from the use for human habitation of any tent, etc., the local authority may serve an abatement notice on the occupier of the land on which the tent, etc., is erected or stationed and take proceedings under Part III. of the Act of 1936, in addition to serving notice and taking proceedings against the occupier of the tent, etc. Where the occupier of the land is proceeded against, it is a good defence to prove that he did not authorise the tent, etc., to be stationed or erected upon his land (*a*). It should be noted that the occupier of the land cannot be proceeded against in respect of nuisances coming within the definition contained in paragraph (*a*), *supra*. In cases where nuisance arises on land other than the site of the tent, etc., it is doubtful whether the owner of the site would have the necessary right of entry on to the other land in order to comply with the requirements of the local authority, but the authority might themselves proceed to abate the nuisance in accordance with the provisions of sect. 95 (2), P.H.A., 1936 (*b*). As to the general liability of the owner of land with respect to nuisances and interference with amenity, see *A.-G. v. Corke* (*c*). Where proceedings are taken before a court in respect of a statutory nuisance arising in connection with a tent, van, shed or similar structure, the court may, in addition to any other powers, make an order prohibiting the use for human habitation of the tent, etc., in question at such places, or within such area, as may be specified in the order (*d*).

[101]

Control of Moveable Dwellings.—Before the passing of the P.H.A., 1936, several local authorities, who had experienced difficulty in dealing with holiday camps and similar collections of moveable dwellings, had obtained power in local Acts enabling them to exercise greater control than was possible under the general law. During the passage of the Act of 1936 through Parliament, sect. 269 (*e*) was introduced, based on the experience gained by the operation of the local powers, and designed to extend to the country as a whole the powers previously confined to certain districts. The M. of H. (*f*) states that sects. 268 and 269 are designed to work together, and sect. 269 "is directed to the control of holiday camping"—a growing practice, which, though strongly to be encouraged in the interests of national health, has, in the absence of control, brought certain difficulties in its train. It should also prove useful in dealing with encampments of a more permanent kind sometimes to be found on the outskirts of towns. The section contemplates two kinds of camping as requiring a licence: (*a*) the standing camp in which there is camping for a period in excess of forty-two consecutive days, or sixty days in any twelve consecutive months, whether or not particular tents, vans, or other structures remain so long, and (*b*) the

(*t*) 29 Halsbury's Statutes 394.

(*u*) P.H.A., 1936, s. 268 (2); 29 Halsbury's Statutes 493.

(*a*) *Ibid.*, s. 268 (3); *ibid.*

(*b*) 29 Halsbury's Statutes 397.

(*c*) [1933] Ch. 89; 31 L. G. R. 35; Digest (Supp.).

(*d*) P.H.A., 1936, s. 268 (5); 29 Halsbury's Statutes 493.

(*e*) 29 Halsbury's Statutes 494.

(*f*) Circular 1600, M. of H., May 1, 1937.

case where a person erects or stations, and uses, a particular structure on a piece of land for a similar period. The removal of a structure for not more than forty-eight hours does not constitute an interruption in the period of forty-two days. In the first class of case the application for a licence is to be made by the occupier of the land and in the second class either by the occupier of the land or by the individual camper.

In those districts where the local authority already had powers under a local Act, similar to those contained in sect. 269, the local powers continue in operation, provided that, on the application of the local authority, the M. of H. may declare sect. 269 to be in force in their district, and thereupon the provisions of the local Act are repealed (g).

A "moveable dwelling," to which sect. 269 applies, "includes any tent, any van or other conveyance whether on wheels or not, and, subject as hereinafter provided, any shed or similar structure, being a tent, conveyance or structure which is used either regularly, or at certain sessions only, or intermittently, for human habitation; provided that it does not include a structure to which the building bye-laws of the local authority apply" (h). It is clear, therefore, that this section does not apply to any structure subject to the requirements of the building bye-laws made under sect. 61, P.H.A., 1936 (i); similarly the provisions of the building bye-laws and of Part II. of the Act of 1936 relating to buildings, do not apply to an erection coming within the scope of sect. 269. On the other hand, a moveable dwelling may be a tent, van, shed or similar structure within the meaning of sect. 268 (k), and be subject to the provisions of that section in addition to those contained in sect. 269.

In order to regulate the use of moveable dwellings within their district, a local authority may grant licences authorising persons (a) to allow land occupied by them within the district to be used as sites for moveable dwellings; and (b) to erect or station, and use, such dwellings within the district, and they may attach to any such licence such conditions as they think fit, (a) in the case of a licence authorising the use of land, with respect to the number and classes of moveable dwellings which may be kept thereon at the same time, and the space to be kept free between any two such dwellings, with respect to water supply, and for securing sanitary conditions, and (b) in the case of a licence authorising the use of a moveable dwelling, with respect to the use of that dwelling (including the space to be kept free between it and any other such dwelling) and its removal at the end of a specified period, and for securing sanitary conditions (l). In the case of land not occupied, the owner thereof is deemed to be the occupier (m). Where application is made to a local authority for a licence under this section, the authority is deemed to have granted it unconditionally unless within four weeks from the date of the application they give notice to the applicant stating that his application has been refused, or stating the conditions subject to which a licence is granted, and, if an applicant is aggrieved by the refusal to grant a licence, or by the conditions attaching thereto, he may appeal to a court of summary

(g) P.H.A., 1936, s. 269 (9); 29 Halsbury's Statutes 496.

(h) *Ibid.*, s. 269 (8); *ibid.*, 495.

(i) 29 Halsbury's Statutes 372.

(k) See *ante*, p. 76.

(l) P.H.A., 1936, s. 269 (1); 29 Halsbury's Statutes 494.

(m) *Ibid.*, s. 269 (8); *ibid.*, 495.

jurisdiction (*n*). The procedure in case of appeal is by way of complaint for an order and the Summary Jurisdiction Acts apply to the proceedings. The appeal must be brought within twenty-one days from the date on which the council's decision is served upon the applicant, and the notice of that decision must state the right of appeal and the time within which it may be brought (*o*). Any person aggrieved by the decision of a court of summary jurisdiction may appeal to quarter sessions (*p*).

The form of licence has not been prescribed (*q*), but it must be in writing. In preparing licences, care should be exercised to identify particular erections, where there are a number on the same site, as it not infrequently happens that additional erections are brought on to a site and unless each is clearly defined on the licence, difficulty may arise between the licensee and the local authority as to the application of the licence. Where conditions are attached to a licence, it should be noted that they must be restricted to those matters detailed in the subsection. With respect to the power to restrict the number of erections on a particular site, due regard should be paid not only to questions of overcrowding on the site but also to questions of the prevention of fire; so far as water supply is concerned, the section does not imply that of necessity such supply should be available on every site, and in this connection it may be well to remember that the model bye-laws relating to tents, etc., contain a requirement to the effect that a supply of wholesome water must be provided on the land on which the tent, etc., is erected, or within three hundred feet thereof. A similar requirement is included with respect to the provision of sanitary conveniences.

Unless the occupier of land holds a licence from the local authority, in accordance with the provisions detailed above, he may not allow such land to be used for camping purposes on more than forty-two consecutive days or on more than sixty days in any twelve consecutive months. Land which is in the occupation of the same person as, and within one hundred yards of, a site on which there is during any part of any day a moveable dwelling, is regarded as being used for camping purposes on that day (*r*). Similarly, a person may not keep a moveable dwelling on any site in excess of the above periods, unless he holds a licence from the local authority (*s*). If a moveable dwelling is removed from the site on which it stands, but within forty-eight hours is brought back to the same site or to another site within one hundred yards thereof, then, for the purpose of reckoning any such period of 42 consecutive days, it is deemed not to have been removed or, as the case may be, to have been moved direct from the one site to the other (*t*). [102]

The provisions of sect. 269 of the Act of 1936, relating to the issue of licences with respect to moveable dwellings, do not apply

(i.) to a moveable dwelling which :

- (a) is kept by its owner on land occupied by him in connection with his dwelling-house and is used for habitation only by him or by members of his household; or
- (b) is kept by its owner on agricultural land occupied by him and is used for habitation only at certain seasons and only by

(*n*) P.H.A., 1936, s. 269 (4); 29 Halsbury's Statutes 494.

(*o*) *Ibid.*, s. 300; *ibid.*, 515.

(*p*) *Ibid.*, s. 283; *ibid.*, 505.

(*q*) *Ibid.*, s. 269 (3); *ibid.*

(*r*) *Ibid.*, s. 301; *ibid.*

(*s*) *Ibid.*, s. 269 (2); *ibid.*, 494.

(*t*) *Ibid.*, s. 269 (8) (iii); *ibid.*, 496.

persons employed in farming operations on that land (*u*);
or

- (ii.) to a moveable dwelling which belongs to a person who is the proprietor of a travelling circus, roundabout, amusement fair, stall or store (not being a pedlar (*a*), hawker (*b*) or costermonger), and which is regularly used by him in the course of travelling for the purpose of his business; or
- (iii.) to a moveable dwelling while it is not in use for human habitation and is being kept on premises, the occupier of which permits no moveable dwellings to be kept thereon except such as are for the time being not in use for human habitation (*c*). [103]

The Minister of Health is empowered to grant a certificate of exemption to an organisation which satisfies him that it takes reasonable steps for securing that camping sites belonging to it, or used by its members, are properly managed and kept in good sanitary condition, and that moveable dwellings used by its members are so used as not to give rise to any nuisance, authorising the use as a site for moveable dwellings of any such camping ground, and authorising any member of the organisation to erect or station on any site, and use, a moveable dwelling (*d*). A certificate so granted may be withdrawn by the Minister at any time, and there is no right of appeal against the refusal to grant a certificate or against its withdrawal. Whilst the issue of such a certificate relieves the person concerned of the necessity for obtaining a licence from the local authority in accordance with the provisions of sect. 269 of the Act of 1936, the provisions of sect. 260 of that Act, and of any bye-laws made thereunder, still apply to any tents, vans, sheds or similar structure used for human habitation by members of an organisation. [104]

Any person who contravenes the provisions of sect. 269 of the Act of 1936, relating to the issue of licences with respect to moveable dwellings, is liable, on summary conviction, to a penalty (*e*). [105]

Other Provisions of the P.H.A., 1936, Applicable to Tents, etc.—The following provisions of the Act of 1936 apply to tents, vans, sheds and similar structures used for human habitation as they apply to other premises, and as if a tent, etc., so used, were a house or a building so used (*f*):

Part II.—Sects. 83 to 86 inclusive, relating to filthy or verminous premises or articles, and verminous persons (*g*);

Part V.—Prevention, notification and treatment of disease (*h*);

Part VII.—Notification of births; maternity and child welfare and child life protection (*i*); and

Part XII.—General Provisions (*k*). [106]

(*u*) See P.H.A., 1936, s. 270; 29 Halsbury's Statutes 496, with respect to bye-laws relating to hop pickers, etc., and the title FRUIT AND HOP PICKERS.

(*a*) Defined by Pedlars Act, 1871, s. 3; 11 Halsbury's Statutes 471.

(*b*) Defined by Hawkers Act, 1888, s. 2; 16 Halsbury's Statutes 579.

(*c*) P.H.A., 1936, s. 269 (5); 29 Halsbury's Statutes 495.

(*d*) *Ibid.*, s. 269 (6); *ibid.*

(*e*) *Ibid.*, s. 269 (7); *ibid.*

(*f*) *Ibid.*, s. 268 (1); *ibid.*, 492.

(*g*) See title DISINFECTION.

(*h*) See title INFECTIOUS DISEASE.

(*i*) See titles NOTIFICATION OF BIRTHS AND MARRIAGES; MATERNITY AND CHILD WELFARE; INFANT LIFE PROTECTION.

(*k*) Relating to, service of notices; power of entry; recovery of expenses; prosecution of offences, etc.

Bye-Laws Relating to Tents, Vans, Sheds and Similar Structures.—A local authority are empowered to make bye-laws for promoting cleanliness in, and the habitable condition of tents, etc., used for human habitation; for preventing the spread of infectious disease; and generally for the prevention of nuisances in connection with such erections (*l*). The M. of H. have issued a series of model bye-laws (*m*).

Where proceedings are taken before a court in respect of a contravention of the bye-laws relating to tents, etc., the court have power in addition to any other remedy, to make an order prohibiting the use for human habitation of the tent, etc., in question at such places, or within such area, as may be specified in the order (*n*). In order to succeed in obtaining an order of this kind, stress should be laid upon the condition of the ground itself. Owing to the absence of proper means for the disposal of slop water, and in some cases absence of proper sanitary conveniences, the ground becomes extremely foul, and it is usually quite impossible to deal with it satisfactorily, otherwise than by prohibiting the land being used as a site for caravans. [107]

Demolition and Repair of Tents, Vans, Sheds, etc.—A local authority are empowered by Part III. of the Housing Act, 1936 (*o*), to schedule as a clearance area blocks of houses which are unfit for human habitation and, subject to confirmation by the M. of H., they may make a clearance order requiring the demolition of all the buildings in such an area. Moveable or temporary buildings may be included in a clearance area provided they have remained on the same site for a period of not less than two years (*p*). Land in a clearance area may not be used for building purposes or otherwise developed, except subject to such restrictions and conditions, if any, as the local authority may think fit to impose, and, in accordance with this provision, the consent of the local authority must be obtained before placing any hut, tent, caravan or other temporary or moveable form of shelter on any land in a clearance area. Where a person is aggrieved by the refusal of a local authority to approve of the proposed development of a site or by the conditions imposed by the authority, he may appeal to the Minister of Health, whose decision in the matter is final (*q*). [108]

Sects. 9 to 17, Housing Act, 1936 (*r*), enable a local authority to require the repair, demolition or closure of insanitary premises (being individual houses, as compared to areas of insanitary houses, dealt with in sect. 26, *supra*). The local authority may, by notice, require the owner of a house to carry out such repairs as may, in their opinion, be necessary to render the house in all respects fit for human habitation, provided that the cost of the necessary work is reasonable. If the premises cannot be rendered fit at a reasonable expense, the authority may make a demolition order, requiring the house to be demolished. Any reference to a "house" in sects. 9 to 17, *supra*, includes a reference to a hut, tent, caravan, or other temporary or moveable form of shelter which is used for human habitation and which has been in the same enclosure for a period of two years next before action is taken under those sections (*s*). [109]

(*l*) P.H.A., 1936, s. 268 (4); 29 Halsbury's Statutes 493.

(*m*) Model Series No. XVII., obtainable from H.M.S.O.

(*n*) P.H.A., 1936, s. 268 (5); 29 Halsbury's Statutes 493.

(*o*) 29 Halsbury's Statutes 584.

(*p*) Housing Act, 1936, s. 26 (8); 29 Halsbury's Statutes 586.

(*q*) *Ibid.*, s. 26 (5); *ibid.*

(*r*) 29 Halsbury's Statutes 572.

(*s*) Housing Act, 1936, s. 23; 29 Halsbury's Statutes 584.

Temporary Buildings.—Temporary buildings, which by sect. 27 of the P.H.A. Amendment Act, 1907 (*t*), were treated as a species different from “buildings” so-called, are not mentioned in the P.H.A., 1936. In this Act structures which formerly might have been dealt with as “temporary buildings” will ordinarily, as distinct from tents, vans, sheds and similar structures, be dealt with under Part II., relating to buildings, and any building subject to those provisions cannot be dealt with as a “moveable dwelling” under sect. 269 of that Act. Similarly, any moveable building to which sect. 269, *supra*, applies, is outside the provisions of the building bye-laws (*u*).

Where plans of a building are deposited with a local authority in accordance with the provisions of the building bye-laws (*v*), and the plans show that it is proposed to construct the building of “short-lived” materials, the authority may, notwithstanding that the plans conform with the bye-laws, either reject the plans altogether, or in passing the plans fix a period on the expiration of which the building must be removed, and impose with respect to the use of the building such reasonable conditions, if any, as having regard to the nature of the materials used in its construction they deem appropriate, provided that no such condition may conflict with any provision applicable to the building under a planning scheme (*a*). These provisions apply in relation to any extension of an existing building as they apply in relation to a new building (*b*). Where a building subject to the provisions of sect. 53 (1), P.H.A., 1936, is erected without the submission of plans to the local authority, they may allow it to remain for a limited period; without prejudice to their right to take action in respect of any contravention of the bye-laws, *e.g.* failure to give notice or intention to erect the building and to submit plans (*c*).

A local authority may, from time to time, extend any period fixed as above, or vary any conditions imposed, but they cannot vary such conditions except when granting an extension, or further extension, of the period fixed with respect to the building, except upon receipt of an application from the owner (*d*). It should be noted that the local authority cannot impose conditions without fixing a period at the expiration of which the building must be removed. This may create practical difficulties in cases where, subject to compliance with conditions regarding the construction and use of the building, the local authority might have been able to allow the building to remain for an indefinite period. Such a course, however, is not possible and the authority must impose a time limit in every case where other conditions are laid down. It must also be emphasised that in prescribing special conditions in this way, the local authority are not empowered to legalise contraventions of the bye-laws; sect. 53 applies only to those cases where the building bye-laws are complied with. Instances of this may arise under subsection (2) of sect. 53, *supra*, where buildings are erected without the prior submission of plans. If such buildings do not comply with the bye-laws, the local authority must take action with a view to securing compliance with the bye-laws or the removal of the building (*e*). It should be remembered that a local authority

(*t*) 13 Halsbury's Statutes 919.

(*u*) M. of H. Model Bye-Laws, Series IV., “Buildings,” Bye-Law 3 (2).

(*v*) See P.H.A., 1936, s. 61; 29 Halsbury's Statutes 372, and see also title BUILDING BYE-LAWS.

(*a*) *Ibid.*, s. 53 (1); *ibid.*, 364.

(*c*) *Ibid.*, s. 53 (2); *ibid.*, 364.

(*e*) *Ibid.*, s. 65; *ibid.*, 376.

(*b*) *Ibid.*, s. 53 (8); *ibid.*, 365.

(*d*) *Ibid.*, s. 53 (3); *ibid.*

are entitled to serve notice requiring an owner to pull down a building erected in contravention of the building bye-laws, provided that action is taken within twelve months from the date of completion of the work (f). In other words, if the erection has been in existence for more than twelve months, the authority cannot take action on the ground of failure to comply with the building bye-laws. It is important, therefore, that an early decision should be made in every case of a temporary or moveable erection, to see whether it comes within the provisions of the building bye-laws or not.

A person who uses a building in contravention of any condition imposed under sect. 53, *supra*, or who permits a building to be so used, is liable to a penalty, and to a daily penalty for a continuing offence (g). Any person aggrieved by the action of a local authority with respect to the rejection of plans, or in fixing or refusing to extend any period, or in imposing or refusing to vary any conditions, may appeal to a court of summary jurisdiction (h). The power of appeal is not restricted to the owner of the building. The procedure to be followed in case of appeal is laid down in sect. 300, P.H.A., 1936 (i), and any person aggrieved by a decision of a court of summary jurisdiction may appeal to quarter sessions (k).

Where the period specified by the local authority has expired, the owner of the building must remove it, and if he fails to do so, the local authority must do so, and may recover from the owner the expenses incurred in so doing. Without prejudice to their power to remove the building, the owner is liable to a penalty and a daily penalty for a continuing offence, for failure to remove the building at the expiration of the time specified (l). [110]

For the purpose of determining what are to be classed as "short-lived" materials, a local authority may by their building bye-laws provide that the provisions of sect. 53 of the Act of 1936 shall apply to any materials specified therein, which are, in the absence of special care, liable to rapid deterioration, or are otherwise unsuitable for use in the construction of permanent buildings (m). Bye-law No. 79 in the model series issued by the M. of H. (n), prescribes that the provisions of sect. 53, *supra*, shall apply to the following materials :

- (1) so far as they are used wholly or principally for the construction of the weather-resisting part of a roof or external wall of a building :
 - (a) match boarding ;
 - (b) sheets of compressed fibre or wood pulp ;
 - (c) ply-wood ;
 - (d) plaster board ;
 - (e) fibrous plaster ;
 - (f) lime or gypsum plaster on wood or metal lath ;
 - (g) cement plaster not exceeding 1½ inches in thickness on wood or metal lath ;

(f) See P.H.A., 1936, s. 65 (4) ; 29 Halsbury's Statutes 377.

(g) *Ibid.*, s. 53 (6) ; *ibid.*, 365.

(h) *Ibid.*, s. 53 (4) ; *ibid.*, 364.

(i) 29 Halsbury's Statutes 515.

(k) P.H.A., 1936, s. 301 ; 29 Halsbury's Statutes 515.

(l) *Ibid.*, s. 53 (5) ; *ibid.*, 364.

(m) *Ibid.*, s. 53 (7) ; *ibid.*, 365.

(n) M. of H. Model Bye-Laws, Series IV., "Buildings."

- (h) sheet iron or steel (whether galvanised or not) which is not painted or otherwise protected by a bituminous or other not less suitable coating;
 - (i) felt;
 - (j) canvas or cloth;
- (2) so far as it is used wholly or principally for the construction of the weather-resisting part of a roof of a building : unprotected softwood boarding. [111]

It should be noted that in dealing with what used to be known as "temporary buildings," sect. 53 of the Act of 1936 avoids the use of that phrase, and the section applies to buildings constructed of any of the materials detailed above. In the repealed sect. 27, P.H.A. Amendment Act, 1907 (*o*), the term "temporary building" was used, and numerous cases have been before the courts in an endeavour to ascertain exactly what was meant by that phrase. Although the new provisions are likely to clarify the position, it may still be necessary to consider some of the decided cases under the repealed section (*p*). It should also be remembered that notwithstanding the provisions of sect. 55, *supra*, a local authority must reject the plans of a proposed building, if the plans are defective or show that the proposed work would contravene any of the bye-laws (*q*). It is clear, therefore, that unless the plans comply with the bye-laws, the special provisions in sect. 53, *supra*, do not apply. This implies in the first instance that the proposals relate to a "building," a term which has not been defined in the statute but which has a very wide meaning, and in respect of which many cases have been decided in the courts (*r*); and secondly, that irrespective of the type of material used in the construction of the building, the plans generally conform to the requirements of the bye-laws. [112]

Temporary Buildings in Existence on the Date of Operation of the P.H.A., 1936.—Where a local authority had given their consent to the erection of a temporary building, either under sect. 27 of the P.H.A. Amendment Act, 1907 (*s*), or under sect. 25 of the Housing, Town Planning, etc., Act, 1919 (*t*), and the building was in existence in October 1, 1937 (*u*), the local authority may extend the period fixed by them, either originally, or by way of extension, as the period during which the building may be allowed to stand, or, as the case may be, may be allowed to be used for human habitation. Any person aggrieved by the refusal of the local authority to extend any such period may appeal to a court of summary jurisdiction (*a*).

Upon the expiration of the extended period fixed by the local authority, the owner must remove the building if it was erected under the Act of 1907 or discontinue its use for human habitation if it was erected under the Act of 1919, and failure to do so renders him liable to a penalty, and a further daily penalty for a continuing offence. Without prejudice, the local authority must remove the building and

(*o*) 13 Halsbury's Statutes 919.

(*p*) See Lumley's Public Health, 11th ed., at pp. 160 *et seq.*

(*q*) P.H.A., 1936, s. 64 (1); 29 Halsbury's Statutes 375.

(*r*) See Lumley's Public Health, 11th ed., at pp. 197 *et seq.*

(*s*) 13 Halsbury's Statutes 920.

(*t*) *Ibid.*, 959.

(*u*) The date of operation of the P.H.A., 1936.

(*a*) P.H.A., 1936, s. 344 (1); 29 Halsbury's Statutes 540.

may recover from the owner any expenses incurred in so doing (b). The Act of 1919, *supra*, lapsed on December 31, 1938, but the Act of 1907, *supra*, remained in operation until the local authority had adopted new building bye-laws under sect. 61 of the P.H.A., 1936, or until October 1, 1938, whichever was the earlier (c). It is probable, therefore, that on October 1, 1937, there were many buildings subject to the provisions of the Act of 1907, but where a time limit had not been imposed, and there now appears to be no method of requiring their removal. [113]

Town Planning Provisions.—Under the Town and Country Planning Act, 1932 (d), local authorities are required to prepare a planning scheme for their areas. Such a scheme provides, *inter alia*, for the restriction of building and the use of land. For this purpose, the local authority may divide their area into “zones,” and a “use zone” means a zone where the use of buildings is restricted. In a use zone certain buildings may be erected without the consent of the local authority; others may be erected and used only with the consent of the authority; and others may not be erected and used. Subject to the usual right of appeal, the local authority may prohibit the erection or use of a building in a use zone for the purpose of preventing danger or injury to health or serious detriment to the neighbourhood. Upon the adoption of the town planning scheme, therefore, a local authority are entitled to prohibit the erection or use of a temporary building or structure in a particular zone, either on account of danger or injury to health, or on account of its detrimental effect upon the amenities of the neighbourhood (e). [114]

London.—The Acts relating to town planning apply equally to London, but the P.H.As. for the purposes of this subject do not apply. Provisions on the lines of those contained in sect. 268 of the P.H.A., 1936, are contained in the P.H. (London) Act, 1936, sect. 135. Sect. 192, which deals with notification of infectious diseases, applies to every tent, van and shed used for human habitation as if it were a house. Sect. 193 applies to notification of disease in tents, vans, sheds, etc., in the occupation of H.M. forces. The relevant provisions of the P.H. (London) Act, with regard to tents, etc., used by H.M. Forces, as extended by sect. 67 of the L.C.C. (General Powers) Act, 1937, are somewhat different from the general provisions of sect. 341 (Power to apply Provisions of Act to Crown Property) of the P.H.A., 1936. [115]

(b) P.H.A., 1936, s. 344 (2); 29 Halsbury's Statutes 540.

(c) *Ibid.*, s. 346 (1), proviso (e); 29 Halsbury's Statutes 541.

(d) 25 Halsbury's Statutes 470.

(e) As to planning schemes generally, see titles TOWN AND COUNTRY PLANNING; TOWN PLANNING SCHEMES.

THAMES CONSERVANCY

See also title : CONSERVANCY AUTHORITIES.

The conservators were originally incorporated by the Thames Conservancy Act, 1857 (*a*), and their jurisdiction as successors of the Corporation of London then extended from Staines to Yantlet Creek in the county of Kent. By the Thames Navigation Act, 1866, the river from Staines upwards to Cricklade, in the county of Wiltshire, formerly under the control of the Thames Navigation Commissioners, was added to the conservators' jurisdiction. Their powers were extended and enlarged by various Acts passed in 1867, 1870, 1878, 1883 and 1885, and were eventually consolidated in the Thames Conservancy Act, 1894 (*b*), which also reconstituted the conservators. By the Port of London Act, 1908 (*c*), the rights, powers and duties of the conservators below an imaginary line about 265 yards below Teddington Lock were, as from March 31, 1909, transferred to the Port of London Authority, but above that limit the control remained with the conservators, who were reconstituted by the Act in question. Since that date the powers and duties of the conservators have been further amended by the Thames Conservancy Acts of 1910, 1911, 1921, 1924, and finally consolidated in the Thames Conservancy Act, 1932. [116]

The jurisdiction of the conservators of the river Thames as a navigation authority extends over a distance of about 136 miles of river, namely, from Cricklade (Wilts) to Teddington (Middlesex); and for the prevention of pollution the powers of the conservators extend over an area of 3,812 square miles, comprising portions of the counties of Warwickshire, Worcestershire, Wiltshire, Gloucestershire, Oxfordshire, Northamptonshire, Berkshire, Buckinghamshire, Bedfordshire, Hertfordshire, Hampshire, Surrey, Middlesex, East Sussex and West Sussex. [117]

By the Land Drainage Act, 1930 (*d*), the conservators were constituted the Drainage Board of the Thames Catchment Area, in addition to their duties under the Thames Conservancy Act, and exercise jurisdiction over 1,419 miles of "main river" comprising the Thames proper above Teddington and the whole or part of certain tributaries, indicated in red on the statutory map.

In consequence of the Land Drainage Act, and the additional powers and duties thereby imposed, the constitution of the board was increased from twenty-eight conservators to thirty-four as under :

<i>Appointing Authorities or Councils.</i>									<i>Number of Conservators.</i>
Minister of Shipping -	-	-	-	-	-	-	-	-	One
Minister of Agriculture	-	-	-	-	-	-	-	-	One

(*a*) 20 & 21 Vict. c. 147.

(*c*) 20 Halsbury's Statutes 350.

(*b*) 57 & 58 Vict. c. 87.

(*d*) 23 Halsbury's Statutes 529.

<i>Appointing Authorities or Councils.</i>								<i>Number of Conservators.</i>
Minister of Agriculture	-	-	-	-	-	-	-	Three
Minister of Transport	-	-	-	-	-	-	-	Two
Port of London Authority	-	-	-	-	-	-	-	One
Metropolitan Water Board	-	-	-	-	-	-	-	Two
L.C.C.	-	-	-	-	-	-	-	One
Corporation of the City of London	-	-	-	-	-	-	-	One
Gloucestershire County Council	-	-	-	-	-	-	-	One
Wiltshire County Council	-	-	-	-	-	-	-	One
Oxfordshire County Council	-	-	-	-	-	-	-	Two
Berkshire County Council	-	-	-	-	-	-	-	Two
Buckinghamshire County Council	-	-	-	-	-	-	-	Two
Surrey County Council	-	-	-	-	-	-	-	Three
Middlesex County Council	-	-	-	-	-	-	-	Three
Hertfordshire County Council	-	-	-	-	-	-	-	Two
Council of the county borough of Oxford	-	-	-	-	-	-	-	One
Council of the county borough of Reading	-	-	-	-	-	-	-	One
Councils of the boroughs of Wind- sor, Henley-on-Thames, Maiden- head, Abingdon and Walling- ford, and of the urban districts of Eton, Marlow, Egham, Staines, Chertsey, Walton and Weybridge and Sunbury	-	-	-	-	-	-	-	Two
Council of the borough of Kings- ton-on-Thames and the coun- cils of the urban districts of Esher, Surbiton, Hampton, Hampton Wick and Teddington	-	-	-	-	-	-	-	Two

[118]

The statutory powers and duties of the conservators under the Thames Conservancy Act, 1932, are briefly as follows :

Construction and maintenance of locks, weirs and all other works necessary for the carrying on of the navigation.

Establishment and maintenance of ferries.

Appointment of water bailiffs for the protection of fisheries.

Regulation of water levels.

Removal of sunken vessels.

Removal of obstructions from the river and towpaths.

Dredging for the purpose of maintaining and improving navigation.

Maintenance of the flow and prevention of pollution of the river and all tributaries and streams connected with it.

Granting of licences for works in the river.

Registration of steam launches, houseboats and pleasure boats, and regulation of these vessels.

Levying tolls on vessels.

Making bye-laws for a number of purposes.

Regulation of navigation and prevention of pollution from vessels.

The conservators' income, which amounts to approximately £130,000 per annum, is derived from the following sources :

Contributions by the Metropolitan Water Board and water companies.

Contributions by the councils of counties and county boroughs.

Tolls on pleasure and merchandise traffic.

Registration of vessels.

Sale of ballast.

Sundry charges.

The following are the powers and duties of the conservators as the Drainage Board of the Thames Catchment Area :

General supervision with respect to the drainage of the Thames Catchment Area and in particular as regards the activities of Internal Drainage Boards, whose powers are, in respect of certain matters, only exerciseable subject to the approval of the conservators.

Exclusive powers and jurisdiction with respect to the " main river " and the banks thereof, and with respect to drainage works in connection therewith, improvement of existing works and construction of new works, cleansing, repairing, deepening, widening and straightening of the " main river," and generally maintaining it in a due state of efficiency.

The exercise of the powers of an internal drainage board in default. The promotion of, or opposition to, Bills in Parliament and the application for, or opposition to, provisional or other statutory orders.

The purchase, sale or exchange of land, including the power to acquire land compulsorily by means of an order.

The making of bye-laws to secure the efficient working of the system of drainage.

The appropriation and disposal of dredged material. [119]

To meet the expenditure incurred in connection with land drainage, the conservators are empowered to precept on the county councils and county borough councils in the watershed, and to obtain contributions from internal drainage boards.

The Head Office of the conservators is at 2/3 Norfolk Street, Strand, London, W.C.2. Their temporary war-time address is De Bohun Road, Reading, Berks. (Telephone No. : Reading 60476.) [120]

THEATRES

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Licensing. *Necessity for a Licence.*—No person may have or keep any house or other place of public resort (a) for the public performance of stage plays without authority by letters patent (b) of the Crown or without a licence granted by the appropriate licensing authority (c). A “stage play” includes every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime or other entertainment of the stage or any part thereof, but not a theatrical representation in any booth or show which is allowed by the proper authority in any lawful fair, feast or customary meeting of the like kind (d).

The question as to whether or not an entertainment comes within this definition is one of fact (e).

Whether a performance of ballet is within this definition seems to depend on whether the ballet represents a connected story by acting, in which case it is, or whether it consists of dancing only without a story, in which case it is not (f). [121]

(a) For the purpose of bye-laws relating to betting and made under a local Act an unenclosed piece of private ground was held to be a place of public resort where in fact it was used as such; *Kitson v. Ashe*, [1899] 1 Q. B. 425, D. C.; 25 Digest 436, 331.

(b) As to granting of letters patent, see *Ex parte O'Reilly* (1790), 1 Ves. 112, L. C. 42 Digest 904, 8; *Calcraft v. West* (1845), 2 Jo. & Lat. 123, I. R.; 42 Digest 904, b.

(c) Theatres Act, 1843, s. 2; 19 Halsbury's Statutes 335. The charters under which the Royal Albert Hall is incorporated are not “letters patent” within the meaning of the Theatres Act, 1843; *Royal Albert Hall v. L.C.C.* (1911), 104 L. T. 894; 42 Digest 903, 6. See Royal Albert Hall Act, 1927 (17 & 18 Geo. 5, c. lxxiv.), s. 16.

(d) *Ibid.*, s. 23; *ibid.*, 341.

(e) *Wigan v. Strange* (1865), L. R. 1 C. P. 175; 42 Digest 918, 132. See also cases on Dramatic Copyright Acts; 3 Halsbury's Statutes 711 *et seq.*, e.g. *Lee v. Simpson* (1847), 3 C. B. 871; 13 Digest 214, 506, where it was decided that an introduction to a pantomime, although the only written part of the entertainment, was a “dramatic piece”; *Tate v. Fullbrook*, [1908] 1 K. B. 821; (1907), 23 T. L. R. 715, C. A.; 13 Digest 174, 100, where it was held that spoken words were not necessary to constitute a “dramatic piece”; *Russell v. Smith* (1848), 12 Q. B. 217; Digest (Supp.), where a descriptive song sung dramatically and sometimes expressing the feelings of the characters in the song in their own language was held to be a “dramatic piece” although the singer accompanied himself on the piano and was unassisted by scenery or appropriate dress. In this case, the court expressly distinguished between the expression “stage play” in the Theatres Act, 1843, and the expression “dramatic piece.” See also *Clark v. Bishop* (1872), 25 L. T. 908; 13 Digest 174, 97, and *Fuller v. Blackpool Winter Gardens and Pavilion Co.*, [1895] 2 Q. B. 429, C. A.; 13 Digest 174, 99.

(f) *Wigan v. Strange*, *supra*. See also *Gallini v. Laborie* (1793), 5 Term Rep. 242; 42 Digest 911, 73, and *De Begnis v. Armistead* (1833), 10 Bing. 107; 42 Digest 910, 65, decisions on repealed Acts.

A representation by mirrors on a stage of actors who were in fact below the stage but were in this way reflected on it, and who acted their parts and addressed each other in the words allotted to them (*g*), and a dramatic performance called a duologue in which two persons appearing in different costumes and characters held dialogues with each other (*h*), have respectively been held to come within the definition of "stage play." Under a repealed Act "tumbling" was held not to be an entertainment of the stage (*i*); and a booth theatre which is taken to pieces and carried from place to place for theatrical performances is not a "house or other place of public resort for the public performance of a stage play" (*k*).

It has been decided that the owner and occupier of a building was rightly convicted of having or keeping a house for the public performance of stage plays without a licence, where the interior of the building was fitted up as an ordinary theatre with the usual adjuncts, other than a box office and place for the sale of tickets or receipt of money, and the owner and occupier, without a licence, gratuitously allowed it to be used on a few occasions for the performance of stage plays to which the public were admitted on payment for the benefit of a charity (*l*).

The keeping of a house for the public performance of stage plays merely for one day without a licence would be an offence, and it is not necessary to prove habitual use (*m*). On the other hand, a person who hired an unlicensed public room for six nights and publicly performed stage plays in it, was held not liable to be convicted for "having and keeping" a place of public resort for such purpose without a licence (*n*). Where, in order to secure admission to the performance of a stage play, it is necessary to become a member of a theatre society and pay a subscription, the Act may be infringed if it is shown that the constitution of the society is merely a colourable excuse and in fact the performance is a public performance (*o*). [122]

An excise licence may be granted to sell beer, wine and spirits in a theatre without the production by the applicant of any certificate or authority of the licensing justices (*p*), but this privilege does not extend to music halls licensed only for music and dancing (*q*). The provisions

(*g*) *Day v. Simpson* (1865), 18 C. B. (N. S.) 680; 42 Digest 918, 133.

(*h*) *Thorne v. Colson* (1861), 25 J. P. 101; 42 Digest 918, 134; *Thorne v. St. Clair* (1861), 25 J. P. 102; 42 Digest 918, 135.

(*i*) *R. v. Handy* (1795), 6 Term Rep. 286; 42 Digest 918, 133.

(*k*) *Davys v. Douglas* (1859), 4 H. & N. 180; 42 Digest 903, 1. Such a theatre is a "place" within the meaning of s. 11 of the Theatres Act, 1843; 19 Halsbury's Statutes 338, see p. 97, note (*e*), but not a "tenement" within the meaning of the Metropolitan Police Act, 1839, s. 46; 19 Halsbury's Statutes 335; *Fredericks v. Howie* (1862), 1 H. & C. 381; 42 Digest 905, 22.

(*l*) *Shelley v. Bethell* (1883), 12 Q. B. D. 11; 42 Digest 903, 5.

(*m*) *Ibid.* It would appear also that it is not necessary that the premises should be used solely as a theatre, see *Gregory v. Tuffs* (1833), 6 C. & P. 271; 15 Digest 758, 8162, and *Bellis v. Beal* (1797), 2 Esp. 592; 42 Digest 919, 144, both decisions relating to music and dancing. See titles MUSIC, SINGING AND DANCING; LICENSING.

(*n*) *R. v. Strugnell* (1865), L. R. 1 Q. B. 93; 42 Digest 903, 4. It was pointed out that the section of the Act which really applied to the case was s. 11 which imposes penalties on persons acting or representing or causing, permitting or suffering to be acted or presented any part in any stage play in an unlicensed place.

(*o*) *R. v. Grey* (1911), 75 J. P. Jo. 545.

(*p*) Excise Act, 1835, s. 7; 16 Halsbury's Statutes 135; Licensing (Consolidation) Act, 1910, s. 111 (2) (*e*); 9 Halsbury's Statutes 1043.

(*q*) *R. v. Inland Revenue Commissioners* (1888), 21 Q. B. D. 569, D. C.; 30 Digest 74, 591.

of the Licensing Acts, with regard to closing apply, however, to theatres (*r*) and it is unlawful to make, use, or allow to be made or used, any internal communication between premises with a liquor licence and premises not so licensed and used for public entertainment or resort (*s*).

The existence of a music and dancing licence does not entitle the holder to use the licensed premises for stage plays (*t*), nor (subject to certain exceptions in the London area) (*u*) does the existence of a theatre licence dispense with the necessity of a music and dancing licence where the premises are used for the latter purpose (*a*).

Although swimming baths under the management of local authorities are permitted by statute in certain cases to be used for other purposes this does not entitle them to be used for the performance of stage plays without a licence (*b*).

The Theatres Act does not apply to the use by the authority of a Secretary of State (*c*) or the Admiralty of any building at a camp, station or naval establishment, or of any ship, for the purpose of public entertainment or amusement under the direction of and control of an officer (*c*) or committee having official responsibilities for such matters (*d*). [123]

Licensing Authorities.—The Lord Chamberlain is the licensing authority for all theatres (not being patent theatres) within the Parliamentary boundaries of the cities of London and Westminster and of the boroughs of Finsbury and St. Marylebone, the Tower Hamlets, Lambeth, Southwark, New Windsor and Brighton (*e*).

Within places where the Sovereign in person occasionally resides, licences may be granted by the Lord Chamberlain and by the other licensing authorities mentioned below, but licences granted other than by the Lord Chamberlain will not be in force during the residence of the Sovereign, and during such time it is not lawful to open theatres (not being patent theatres) without the Lord Chamberlain's licence (*f*).

[124]

Outside the limits of the exclusive jurisdiction of the Lord Chamberlain, the licensing authorities are county councils and county borough councils (*g*) who may delegate to a committee of themselves or to

(*r*) *Gallagher v. Rudd*, [1898] 1 Q. B. 114, D. C.; 30 Digest 72, 571. See also Licensing Act, 1921, s. 18; 9 Halsbury's Statutes 1064.

(*s*) Licensing (Consolidation) Act, 1910, s. 70; 9 Halsbury's Statutes 1025.

(*t*) *Levy v. Yates* (1888), 8 Ad. & El. 129; 42 Digest 904, 7; *Day v. Simpson* (1865), 18 C. B. (N. S.) 680; 42 Digest 918, 133.

(*u*) See Disorderly Houses Act, 1751, s. 4; 4 Halsbury's Statutes 361, and title MUSIC, SINGING AND DANCING.

(*a*) See *Syers v. Conquest* (1873), 28 L. T. 402; 72 J. P. Jo. 318; 15 Digest 758, 8156.

(*b*) P.H.A., 1936, s. 226; 29 Halsbury's Statutes 472.

(*c*) For definition of "Secretary of State" and "Officer," see Army Act, 1881, s. 190 (1), (4); 17 Halsbury's Statutes 241.

(*d*) *Ibid.*, s. 174A inserted in Army Act and the Air Force Act by Army and Air Force (Annual) Act, 1932, s. 7; 25 Halsbury's Statutes 611.

(*e*) Theatres Act, 1843, s. 3; 19 Halsbury's Statutes 336.

(*f*) *Ibid.* In practice, licences are granted by the Lord Chamberlain for one year from December 1; and also for shorter periods, but all such licences cease on November 30 (Rules and Regulations of the Lord Chamberlain). Temporary stage play licences are also granted in appropriate cases by the Lord Chamberlain (Rules and Regulations of the Lord Chamberlain with regard to Temporary Stage Plays Licences).

(*g*) *Ibid.*, s. 5; 19 Halsbury's Statutes 336; L.G.A., 1888, ss. 7, 28, 34; 10 Halsbury's Statutes 691, 707, 711, as amended by L.G.A., 1933, s. 307, Sched. XI., Part III.; 26 Halsbury's Statutes 518.

justices sitting in petty sessions any of their licensing powers or duties other than the power of raising money by rate or loan (*h*).

A county council may within certain limits delegate any of their functions with or without restrictions or conditions as they think fit to a district council situate wholly or in part in the county (*i*). Within twenty-one days of an application for a licence made in writing and signed by the applicant and delivered to the clerk of the licensing authority, the licensing authority must hold a special session for granting such licences (*k*). [125]

No licence may be in force within the precincts of the University of Oxford or within fourteen miles of the city of Oxford without the consent of the Chancellor or Vice-Chancellor of the university (*l*) [126]

There is no general statutory power to grant a licence in respect of premises which are not in being, but in practice licensing authorities are often prepared to approve plans of proposed buildings and to intimate that they are prepared to consider favourably the granting of a licence when the building is erected provided their regulations and conditions are complied with (*m*).

A licensing authority, however, have no power to give indications as to future events and to lay it down that a licence will later be granted or refused, nor can they by what is called a gentleman's agreement limit or control in any way their own decisions or those of their successors in the future (*n*).

The licensing authority may in their discretion refuse a licence, and there is no appeal from their decision nor need any ground be stated for refusal (*o*). The authority must, however, exercise their discretion properly and in respect of each case, otherwise a *mandamus*

(*h*) L.G.A., 1933, s. 85 ; 26 Halsbury's Statutes 352 ; L.G.A., 1888, ss. 28, 34, *supra*.

(*i*) L.G.A., 1933, s. 274 ; 26 Halsbury's Statutes 451.

(*k*) Theatres Act, 1843, s. 5 ; 19 Halsbury's Statutes 336. Justices of the peace were originally, under the Theatres Act, the licensing authority ; but their powers were transferred to county councils and county borough councils by the L.G.A., 1888, ss. 28, 34, as amended, *supra*. S. 5, however, was not amended, and specifies a procedure much of which would appear to be inapplicable to county councils and county borough councils. The section provides that an application must be countersigned by at least two justices acting in and for the division in which the property concerned is situate, that a special session must be held, that seven days' notice must be given by the clerk to the justices to each of the justices acting within such division, district or place, that every such licence must be given under the hands and seals of four or more of the justices assembled at the special session, and signed and sealed in open court and that afterwards such licence must be publicly read by the clerk, with the names of the justices subscribing it. How far such procedure is now to be followed is questionable, but licensing authorities will be well advised to conform with it so far as it is practicable. For form of application, see Encyclopædia of Forms and Precedents (2nd ed.), Vol. XII., Form 6, p. 500. As regards Birmingham, see Birmingham Corporation Act, 1935 (25 & 26 Geo. 5, c. cxii.), s. 90 (1).

(*l*) Theatres Act, 1843, s. 10 ; 19 Halsbury's Statutes 338. As to further powers of the Chancellor and Vice-chancellor, see p. 94. This section originally applied to the University of Cambridge, but was repealed by the Cambridge University Act, 1894, s. 8. By s. 9 of that Act the Cambridgeshire county council may revoke a licence within the borough of Cambridge on complaint in writing by the Vice-Chancellor or Mayor, provided the person complained of is given an opportunity of answering such complaint before the licensing authority.

(*m*) *R. v. Barnstaple JJ., Ex parte Carder*, [1937] 4 All E. R. 263 ; Digest (Supp.) (a decision relating to cinematograph licensing).

(*n*) *Ibid.*, per DU PARCQ., J., at pp. 555—556.

(*o*) *Ex parte Harrington* (1888), 4 T. L. R. 435 ; 42 Digest 904, 9.

will lie, and it is not open to them to adopt a general resolution that they will not grant any new licences (*p*).

Discretion implies that the decision will be within the rules of reason and justice, and not according to private opinion; according to law and not according to humour. "It must not be arbitrary, vague and fanciful, but legal and regular" (*q*).

It is essential that no irregularities, which may interfere with, or appear to interfere with, the proper exercise of the discretion of the licensing authority, should occur, and it has been held that though members of a licensing authority are not compelled to vote, they should not appear on the licensing tribunal if they do not intend to or cannot vote (*r*).

Where a member of a licensing authority has been absent during a considerable part of the proceedings before that authority, he should not take part in the authority's deliberations and decision and the position cannot be rectified by deducting his vote from the vote of the other members who properly took part in the decision (*s*).

A licensing authority when sitting to grant licences are not a court, and a member making slanderous remarks at such a meeting does not receive absolute protection from any action brought against him in respect of such remarks. He is only entitled to the ordinary privilege which applies to a communication made without express malice on a privileged occasion (*a*). [127]

To Whom Licences may be Granted.—A licence may only be granted to the actual and responsible manager for the time being of the theatre. The name and place of abode of the manager must be printed on every playbill announcing any representation at the theatre (*b*).

The manager must become bound in such penal sum as the licensing authority may fix not exceeding £500, and two sufficient sureties approved by the licensing authority must be bound each in a penal sum not exceeding £100, for the due observance of the rules in force for the time being during the currency of the licence for the regulation of the theatre and for securing payment of the penalties to which the manager may become liable for breach of the rules and the Theatres Act (*c*). [128]

Rules for the Control of Theatres.—Where it appears to the Lord Chamberlain that any riot or misbehaviour has taken place in a theatre

(*p*) *R. v. Walsall JJ.* (1854), 3 C. L. R. 100; 30 Digest 29, 204 (a decision relating to liquor licensing).

(*q*) *Sharp v. Wakefield*, [1891] A. C. 173, *per* Lord HALSBURY, L.C., at p. 179; 30 Digest 12, 49; *R. v. Cardiff Corpn., Ex parte Westlan Productions, Ltd.* (1929), 73 Sol. Jo. 766; Digest (Supp.) (which shows that each application must be considered on its merits, and not in accordance with a general rule).

(*r*) *R. v. L.C.C.*, [1892] 1 Q. B. 190; 33 Digest 103, 698 (a decision relating to music and dancing licensing); *R. v. Meyer* (1875), 1 Q. B. D. 173; 33 Digest 294, 100; *R. v. Spurgeon* (1920), *Times*, October 21 (decisions relating to justices).

(*s*) *Goodall v. Bilsland*, [1909] S. C. 1152; 33 Digest 298, 130 *vi* (a decision relating to liquor licensing).

(*a*) *Royal Aquarium and Summer and Winter Garden Society v. Parkinson*, [1892] 1 Q. B. 431; 33 Digest 104, 699 (a decision relating to music and dancing licensing); *Attwood v. Chapman*, [1914] 3 K. B. 275; 16 Digest 99, 11 (a decision relating to liquor licensing).

(*b*) Theatres Act, 1843, s. 7; 19 Halsbury's Statutes 337.

(*c*) *Ibid.* It is not necessary to take such bonds in Birmingham. See Birmingham Corporation Act, 1935 (25 & 26 Geo. 5, c. cxii.), s. 90 (1). For form of bond, see *Encyclopædia of Forms and Precedents* (2nd ed.), Vol. XII., Form 8, p. 504.

licensed by him or in any patent theatre, he is entitled to suspend the licence or to order the patent theatre to be closed for such time as he thinks fit. He may also order any theatre licensed by him to be closed on such public occasions as he thinks fit. Where a licence is suspended or any such order is in force, the theatre is deemed an unlicensed house (*d*).

Where the Lord Chamberlain is not the licensing authority, the licensing authority may make suitable rules for ensuring order and decency at theatres licensed by them and for regulating the times during which they are permitted to be open and may rescind or alter such rules from time to time. Any one of His Majesty's Principal Secretaries of State is entitled to rescind or alter any such rules and to make other rules as he thinks fit (*e*). A copy of all rules in force for the time being must be annexed to each licence and in the event of any riot or breach of such rules being proved before any two justices usually acting in the jurisdiction where the theatre concerned is situate, the justices may order the theatre to be closed for such time as they think fit. While such order is in force, the theatre is deemed to be an unlicensed house (*f*). [129]

Where a theatre is within the precincts of the University of Oxford or within fourteen miles of the city of Oxford, any rules of management of such theatre are subject to the approval of the Chancellor or Vice-Chancellor of the University.

In the event of any breach of the rules or of any condition on which the consent of the Chancellor or Vice-Chancellor to the grant of any such licence has been given, it is lawful for the Chancellor or Vice-Chancellor to annul the licence whereupon it will become void (*g*). [130]

In granting licences, licensing authorities may also impose conditions. Although there is no appeal from such rules and conditions, objection may be taken to them on the ground that in imposing them the licensing authority have not properly exercised their discretion or that the conditions are unreasonable and *ultra vires*. It has been decided that a licensing authority may in exercise of their discretion attach to the granting of a licence for such performances, a condition that the grantee shall undertake not to apply to the excise authorities for a licence to sell intoxicating liquors in his theatre (*h*). The court has also refused to set aside a deed whereby a licensee bound himself not to apply for a licence for the sale of intoxicating liquor, a memorandum of the deed being attached to the theatre licence (*i*). Similarly a rule that "no spirituous liquors, wines, ale, porter, cider, perry or tobacco shall be sold or disposed of" has been held not *ultra vires* as depriving the excise authorities of their discretion in granting an excise licence, nor as preventing the licensing authority from

(*d*) Theatres Act, 1843, s. 8 ; 19 Halsbury's Statutes 337.

(*e*) *Ibid.*, s. 9 ; *ibid.*, 338. The section provides that such rules shall be made, rescinded, or altered, at a special session, or at some adjournment thereof. See *ante*, p. 92, note (*k*).

(*f*) *Ibid.* For form of licence and rules, see Encyclopædia of Forms and Precedents (2nd ed.), Vol. XII., Form 7, p. 501.

(*g*) *Ibid.*, s. 10 ; 19 Halsbury's Statutes 338. This section originally applied to the University of Cambridge, but was repealed by the Cambridge University Act, 1894, s. 8.

(*h*) *R. v. West Riding County Council*, [1896] 2 Q. B. 386 ; 42 Digest 904, 10 ; *Manchester Palace of Varieties, Ltd. v. Manchester Corpn.* (1898), 62 J. P. 425 ; 42 Digest 904, 11. In West Ham there are special penalty provisions for breach of conditions. *West Ham Corporation Act, 1937* (c. cxxxv.), s. 99.

(*i*) *Manchester Palace of Varieties v. Manchester Corpn.*, *supra*.

determining on the merits an application for a theatre licence free of all restrictions (*k*). It would seem that if the licensing authority by means of a condition delegated their discretion in any matter appertaining to the proper exercise of their powers under the Act to some other body or person, except as expressly authorised by statute, the condition would be *ultra vires* (*l*).

Where a licensee has accepted a licence subject to invalid conditions the position is not free from doubt. On the one hand the view has been expressed that he can legitimately take advantage of the fact that the condition does not bind him (*m*), and on the other, that once having accepted a licence in such circumstances, if he commits a breach of the condition, he is liable to the penalties imposed by statute (*n*). In imposing conditions, it is usual for the licensing authority to make requirements with regard to the site, structure, internal arrangement and management of the premises and to the provision of adequate measures to prevent and extinguish fire. [131]

The Lord Chamberlain has formulated rules and regulations with regard to theatres in his jurisdiction and also special rules with regard to temporary stage play licences. These rules and regulations contain, among other conditions, safety provisions as to exits and entrances, fire appliances and precautions, lighting, heating and other installations, structure, seating, ventilation and sanitation, dressing rooms, and other provision as to safety and the proper conduct of the premises. The H.O. has also issued a manual which is a useful guide to licensing authorities and contains advice and model requirements and conditions with regard to the safety requirements in theatres and other places of public entertainment. The model conditions and requirements cover a wide range, including the situation of premises, exits, seating, gangways, safety curtains, stairways, floor coverings, hangings, fire extinguishment, electrical installation and emergency signalling, and are based on the investigation of various fire disasters (*o*). [132]

Borough, urban district and rural district councils have certain statutory powers for the control of ingress, egress, passages or gangways of theatres (*p*).

Such councils are also empowered to require the owner or occupier of places of public entertainment to provide and maintain in a suitable position such number of sanitary conveniences for the use of persons

(*k*) *R. v. Sheerness U.D.C.* (1898), 62 J. P. 563; 42 Digest 904, 12. See also cases on cinematograph licensing such as *Theatre de Luxe (Halifax), Ltd. v. Gledhill*, [1915] 2 K. B. 49; 42 Digest 920, 160; *R. v. L.C.C., Ex parte London and Provincial Electric Theatres, Ltd.*, [1915] 2 K. B. 466; 42 Digest 920, 154; *Ex parte Stott*, [1916] 1 K. B. 7; 42 Digest 921, 167; *R. v. Burnley J.J., Ex parte Longmore* (1916), 85 L. J. (K. B.) 1565; 42 Digest 921, 161; *Ellis v. Dubowski*, [1921] 3 K. B. 621; 42 Digest 921, 162; *Mills v. L.C.C.*, [1925] 1 K. B. 213; 42 Digest 922, 171, and cases on Music and Dancing Licensing (*R. v. Aberdare J.J.* (1917), 81 J. P. Jo. 224; *Ex parte Richards* (1904), 68 J. P. 536; 42 Digest 920, 153).

(*l*) *Ellis v. Dubowski, supra*.

(*m*) *Theatre de Luxe (Halifax), Ltd. v. Gledhill, supra, per LUSH, J.*, at p. 54; *Ellis v. Dubowski, supra, per SANKEY, J.*, at p. 627.

(*n*) *Ellis v. Dubowski, supra, per AVORY, J.*, at p. 6.

(*o*) Manual of Safety Requirements in Theatres and other places of public entertainment, issued by the H.O., 1934. Price 2s. 6d. net. See also title SAFETY PROVISIONS OF BUILDINGS AND STANDS. As to provision of safety of children at entertainments, see Children and Young Persons Act, 1933, s. 12; 26 Halsbury's Statutes 178; and title EMPLOYMENT OF CHILDREN AND YOUNG PERSONS.

(*p*) P.H.A., 1936, s. 59; 29 Halsbury's Statutes 369. See title SAFETY PROVISIONS OF BUILDINGS AND STANDS.

frequenting the premises as may be reasonable, and there are penalties for failure to comply with such requirement (*q*). [133]

Fees for Licences.—A fee is payable for a licence from the Lord Chamberlain in accordance with such scale of fees as is fixed by him (*r*). A fee for a licence must not exceed ten shillings for each calendar month during which the theatre is licensed to be kept open. A licensing authority other than the Lord Chamberlain may also fix a scale of fees for licences granted by them. A fee for a licence must not exceed five shillings for each calendar month during which the theatre is licensed to be kept open (*s*). [134]

Submission of Stage Plays to Lord Chamberlain. *Procedure.*—A copy of every stage play and of every new act, scene or other part added to any old stage play and of every new prologue or epilogue and every new part added thereto intended to be produced and acted for hire at any theatre must be sent to the Lord Chamberlain at least seven days before the first acting or presentation with an account of the theatre where the play is to be acted or presented, signed by the master or manager of the theatre. During the seven days no person must hire, act or present the play, prologue or epilogue (*t*). It is not lawful to act or present any play, prologue or epilogue or any part thereof disallowed by the Lord Chamberlain contrary to such disallowance (*t*). Regulations for the submission of stage plays have been formulated by the Lord Chamberlain and set out his requirements in this connection. [135]

Fees.—The Lord Chamberlain is entitled to charge such fees for the examination of plays, prologues, epilogues or parts thereof, sent to him for examination as from time to time he thinks fit in accordance with a scale fixed by him.

Such fee must not exceed two guineas and must be paid at the time when works are sent for examination by him. The period of seven days will not begin to run until such fees have been paid (*u*). [136]

Prohibition of Plays.—The Lord Chamberlain is entitled to forbid the acting or presentation of any stage play or any act, scene or part thereof or any prologue or epilogue or part thereof anywhere or in such theatres as he may specify, and either absolutely or for such time as he thinks fit, whenever he is of opinion that it is fitting for the preservation of good manners, decorum or of the public peace so to do (*a*). [137]

(*q*) P.H.A., 1936, s. 89; 29 Halsbury's Statutes 391. See title PUBLIC HEALTH.

(*r*) Theatres Act, 1843, s. 4; 19 Halsbury's Statutes 336. The fees are as follows: The fees charged for a licence are 10s. per month, plus 10s. for the annual bond. For an occasional licence the fees charged are 10s. for any number of days in one calendar month.

(*s*) *Ibid.*, s. 6; *ibid.*, 337.

(*t*) *Ibid.*, s. 12; *ibid.*, 339. In practice the Lord Chamberlain is prepared to receive MSS submitted by authors or producers of plays where it has been definitely arranged to produce the play on a specified date.

(*u*) *Ibid.*, s. 13; *ibid.* The present scale of reading fees fixed by the Lord Chamberlain is as follows:

	£	s.	d.
One act with not more than four scenes - - -	1	1	0
One act with more than four scenes - - -	2	2	0
Two acts with not more than four scenes in all - - -	1	1	0
Two acts with more than four scenes in all - - -	2	2	0
Three or more acts with any number of scenes - - -	2	2	0
Additional scenes to plays, revues or pantomimes already licensed - - -	1	1	0

(*a*) *Ibid.*, s. 14; *ibid.*

Penalties.—Every person having or keeping any house or other place of public resort for the public performance of stage plays without the authority of letters patent of the Crown or without a licence granted by the appropriate licensing authority is liable to forfeit a sum not exceeding twenty pounds for every day on which the premises have been so kept open without legal authority (*b*). Every person who for hire acts or presents, or causes, permits or suffers to be acted or presented, any part in any stage play in any place not being a patent theatre, or duly licensed as a theatre is liable to forfeit a sum not exceeding ten pounds for each day on which the offence is committed (*c*). [138]

Under a repealed statute, a defendant was convicted of causing to be acted for gain an entertainment of the stage called *Richard the Third*, the evidence being that he was seen once or twice at a rehearsal, that another person was stage manager, that the defendant engaged a certain person to perform and gave him a cheque for the amount of his benefit (*d*). A booth theatre which is taken to pieces and carried from place to place for theatrical performances is a "place" for this purpose (*e*).

If in the proceedings instituted against any persons for having or keeping an unlicensed theatre or for acting for hire in such a theatre, it is proved that the theatre is used for the public performance of stage plays, the burden of proof that the theatre is licensed is on the person accused and until he proves to the contrary the theatre is deemed to be unlicensed (*f*). [139]

Every person who for hire acts or presents or causes to be acted or presented any new stage play or any act, scene or part of such play or any new prologue or epilogue or part thereof, which either has not been allowed by the Lord Chamberlain or has been disallowed or prohibited by him is liable to forfeit a sum not exceeding fifty pounds (*g*).

The court may, in addition to imposing a pecuniary penalty, order that the licence, if any, of the theatre in which the offence was committed shall become void or suspended for any specified period (*h*).

An actor is deemed to be acting for hire in every case where any money or other reward is taken or charged directly or indirectly, or the purchase of any article is made a condition of admission to any theatre to see any stage play or any stage play is acted or presented in any house, room or place in which distilled or fermented exciseable liquor is sold (*i*). [140]

(*b*) Theatres Act, 1843, s. 2; 19 Halsbury's Statutes 335. As regards Birmingham, see Birmingham Corporation Act, 1935 (25 & 26 Geo. 5, c. cxii.), s. 90 (2). In Liverpool, there are special powers of entry for authorised constables. See Liverpool Corporation Act, 1921 (11 & 12 Geo. 5, c. lxxiv.), s. 499.

(*c*) *Ibid.*, s. 11; *ibid.*, 338.

(*d*) *R. v. Glossop* (1821), 4 B. & Ald. 616; 42 Digest 918, 140. See also *Parsons v. Chapman* (1831), 5 C. & P. 33; 42 Digest 905, 20.

(*e*) *Fredericks v. Payne* (1862), 1 H. & C. 584; 42 Digest 903, 2; *Tarling v. Fredericks* (1873), 38 J. P. 197, D. C.; 42 Digest 905, 14, but not a "house or other place of public resort for the public performance of a stage play" within the meaning of s. 2 of the Theatres Act, 1843; 19 Halsbury's Statutes 335. See p. 90, note (*h*).

(*f*) Theatres Act, 1843, s. 17; 19 Halsbury's Statutes 340.

(*g*) *Ibid.*, s. 15; *ibid.*

(*h*) Criminal Justice Act, 1925, s. 43; 11 Halsbury's Statutes 420, which amended Theatres Act, 1843, s. 15; 19 Halsbury's Statutes 340. In such cases it would seem correct practice for the licensee where he himself is not charged with the commission of an offence, to be summoned before the court to show cause why his licence should not be made void or suspended. See 99 J. P. Jo. 26, 277.

(*i*) Theatres Act, 1843, s. 16; 19 Halsbury's Statutes 340. This section "would seem to shew that the hire which the Act contemplates as a necessary constituent

No persons may be prosecuted for offences under the Act unless the prosecution is commenced within six months after the commission of the offence (*k*).

All pecuniary penalties may be recovered in the High Court, or summarily before two justices of the peace for any county, riding, division, liberty city or borough where the offence is committed by the oath of one or more credible witnesses or by confession of the offender. Such penalty, together with the costs, in default of payment may be levied by distress and sale of the offender's goods and in default of sufficient distress, the offender is liable to imprisonment for not exceeding six calendar months (*l*). Any person aggrieved by any order of the justices may appeal to the next general or quarter sessions of the peace (*m*). Penalties for offences under the Act are to be paid and applied in the first instance towards defraying the expenses of the prosecution and the residue is payable to the use of the Crown (*n*). [141]

In the case of a patent or licensed theatre, in certain circumstances, the Lord Chamberlain has power to close or suspend the licence of the theatre, and other licensing authorities may apply to justices for an order closing a theatre licensed by them (*o*). [142]

London.—The Lord Chamberlain issues stage plays licences in respect of premises within the parliamentary boundaries of the Cities of London and Westminster and of the boroughs of Finsbury, St. Marylebone, Lambeth and Southwark and the Tower Hamlets, as defined in the Theatres Act, 1843 (*p*). The L.C.C. issues stage plays licences throughout the remainder of the administrative County of London (*q*). The L.C.C. has power under the L.C.C. (General Powers) Act, 1923, s. 16 (*r*), to vary the conditions attached to licences granted by them. By sect. 29 of the L.C.C. (General Powers) Act, 1924 (*r*), the council may revoke such licences for breach of fire regulations and conditions. See also sect. 55 of the L.C.C. (General Powers) Act, 1935 (*t*), as to occasional user of premises for public entertainments. Sect. 122 of the L.C.C. (General Powers) Act, 1937 (*u*), provides as to dispensation by the council with bonds by theatre managers as respects licences granted by the council under the 1843 Act. [143]

of the offence must be a hire received from the spectators." *Frederick v. Payne* (1802), 1 H. & S. 584; 42 Digest 908, 2, *per* BRAMWELL, B., at p. 590, so that an actor engaged by a private person to take part in a play at his own house would probably not come within the section.

(*k*) Theatres Act, 1843, s. 22; 19 Halsbury's Statutes 341.

(*l*) *Ibid.*, s. 19; *ibid.*, 340.

(*m*) *Ibid.*, s. 20; *ibid.*

(*n*) *Ibid.*, s. 21; *ibid.*, 341.

(*o*) See *ante*, pp. 93 *et seq.* There are also additional powers of control of this character in Oxford and Cambridge.

(*p*) 19 Halsbury's Statutes 336.

(*q*) Theatres Act, 1843, s. 5; 19 Halsbury's Statutes 336, applied by L.G.A., 1888, s. 7 (*a*); 10 Halsbury's Statutes 691.

(*r*) 19 Halsbury's Statutes 357.

(*t*) 28 Halsbury's Statutes 157.

(*u*) 30 Halsbury's Statutes 647.

THEATRICAL EMPLOYERS' REGISTRATION

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See also title : EMPLOYMENT AGENCIES.

General.—Theatrical employers, for the purposes of the Theatrical Employers Registration Acts, 1925 (a) and 1928 (b), are persons who directly or through an agent engage or employ at any one time three or more “theatrical performers”—a phrase which includes performers employed to sing, act, dance or play in any place of public entertainment or to rehearse with a view to such performances. It includes persons employed in the acting or representation of scenes, etc., for representation in cinematographs and the like. Members of a chorus are theatrical performers, but stage hands and members of an orchestra are not. The Acts do not apply to employers holding theatre licences or music and dancing licences, nor to persons who, otherwise than for gain or in the way of business, engage performers in aid of charitable objects.

Theatrical employers within the ambit of the Acts are required to effect registration with the local authority in whose area they reside. The registration authority is, in the City of London, the Common Council, and elsewhere the council of a county or county borough. Before applying for registration, the applicant must advertise his intention in two different issues of a London newspaper devoted to the interest of the theatrical profession. Forms for these advertisements, for applications for registration, for entries in the registers and for certificates of registration are prescribed by the Theatrical Employers' Registration Rules, 1925 (c), which also prescribe the fees payable in connection with registrations, issues of certificates and inspections of registers. As soon as possible after effecting a registration, the registration authority must forward a copy of the entry in the register to the H.O. The register is to be open to public inspection.

The registration authority has no power to refuse registration to any applicant, however undesirable or disreputable, unless he has been convicted for an offence involving dishonesty and has been sentenced therefor to penal servitude or to imprisonment without the option of a fine.

The Acts create a number of offences, and the registration authority is empowered to prosecute summary proceedings in respect thereof. The chief offences are those of carrying on business without being registered, supplying false or misleading particulars to a registration authority, and abandoning performers during the course of an engagement. An employer is deemed to abandon performers if he absents

(a) 19 Halsbury's Statutes 358.
(c) S.R. & O., 1925, No. 1146.

(b) *Ibid.*, 382.

himself from the place where they are in pursuance of the engagement without paying or arranging for the payment of all fees, wages and expenses due, or to fall due to the performers, unless he proves that he was not absent with intent to avoid the payment of any sum due. A court of summary jurisdiction may impose a fine (up to £50), with or without imprisonment not exceeding three months and may also order the cancellation or suspension of the offender's registration. The Acts contain also provisions affecting new applications for registration by persons whose registration has been so cancelled.

In practice, the effective administration of the Acts is difficult and unsatisfactory. An employer who, without absenting himself from the place where the performers are, tells them that he has insufficient means to pay them, may apparently escape scot free. Moreover, prosecutions for the offence of abandoning performers must be instituted in the place where the abandonment took place—which may involve the collection in that place of witnesses who at the time fixed for the hearing are scattered in various parts of the country. Offences connected with registration may have to be prosecuted in one area and the offence of abandoning in another. The clear object of the Acts is to protect theatrical employees from being defrauded by "bogus managers," but the experience of the councils of counties and county boroughs is that the provisions of the Acts rarely enable them to attain that purpose satisfactorily. [144]

London.—The City corporation as regards the City of London, and the L.C.C. as regards the rest of the county, are registration authorities for the purposes of the Theatrical Employers' Registration Acts, 1925 and 1928 (Act of 1925, sect. 13; 19 Halsbury's Statutes 362). [145]

THIRD PARTY RISKS

See INSURANCE.

TITHE AND TITHE RENTCHARGE

See RATING OF SPECIAL PROPERTIES.

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TOLLS AND STALLAGES

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See also titles :

BRIDGES ;
CANALS ;
FERRIES ;

MARKETS AND FAIRS ;
RATING OF SPECIAL PROPERTIES.
TRAMWAYS.

Meaning. General.—The word “toll” denotes a sum of money paid for the use and enjoyment of some privilege or advantage (*a*). It was often used instead of the word “charges,” and its use is now becoming scarcer. Tolls are usually now paid in money, but were formerly frequently paid in kind. By sect. 19 of the Weights and Measures Act, 1878 (*b*), all tolls charged or collected according to weight or measure are to be charged and collected according to the imperial weights and measures.

Tolls formed one of the earliest sources of revenue for boroughs, and grants or exemptions are frequently met with in early charters. These were usually in connection with markets and fairs (*c*), but might also be granted for user of ferries and bridges (*d*), and a “toll travers” taken for every beast driven across a man’s land (*e*). The definition of a toll given in the Railways Clauses Consolidation Act, 1845 (*f*), includes “any rate or charge or other payment payable under the special Act (or fixed by the rates tribunal under the provisions of the Railways Act, 1921), for any passenger, animal, carriage, goods, merchandise, articles, matters or things conveyed on the railway.” [146]

Markets and Fairs.—In connection with markets and fairs a toll has been described as a subordinate franchise appertaining to a franchise of market or fair, not incident to it, but owing its origin to a separate grant (*g*). It is claimable only by grant (*h*), prescription (*i*) or statute.

(*a*) See *Adey v. Trinity House* (1853), 22 L. J. (Q. B.) 3.

(*b*) 20 Halsbury’s Statutes 373.

(*c*) See title MARKETS AND FAIRS.

(*d*) *Post*, pp. 104, 105.

(*e*) *Smith v. Shepherd* (1598), Cro. Eliz. 710.

(*f*) S. 3; 14 Halsbury’s Statutes 31, as amended by the Railways Act, 1921, s. 56, Sched. VI., *ibid.*, 354, 383.

(*g*) *Newcastle (Duke) v. Workop Urban Council*, [1902] 2 Ch. 145; 33 Digest 540, 176.

(*h*) *Hickman’s Case* (1599), Noy, 37; 33 Digest 540, 175.

(*i*) *Heddey v. Welhouse* (1598), Moore K. B. 474; 33 Digest 540, 177; 542, 196.

A grant from time immemorial may, however, be presumed on evidence of collection of toll throughout living memory (*k*). [147]

Stallages.—"Stallage" is the right to put up a stall in a fair or market, or the money paid to the owner of the soil for so doing. Any erection placed for the purpose of selling goods is a "stall" whether fixed in the ground or not (*l*). The right to pick up the soil for the purpose of erecting a stall or the payment therefor is called "pickage" (*m*). A person who has a right to erect a stall has the right also to occupy the soil with baskets necessary and proper for containing the goods (*n*). Stallage is not properly a toll which can only be due by grant or prescription, as stallage is demandable in the case of a newly created market, and the soil is not considered as dedicated to the public, further than the common right of entry goes (*m*). As stallage is paid for user of the soil it can be exacted only by the owner of the soil (*p*), and as it is paid for such user of the soil, it is rateable (*q*). The word "toll" in a grant may include stallage (*r*). [148]

Tolls in Markets and Fairs. *At Common Law*.—As already stated, tolls are claimable at common law by grant or prescription (*s*), though they may also be provided for by statute (*t*). Toll is payable by common law only for live cattle, not for food or other goods, for which the owner of the soil is compensated by stallage or pickage (*u*). No toll is due except for things sold, unless by special custom, and if the goods are sold the toll is payable by the buyer and not by the seller (*a*).

The amount of a toll must not be excessive, and the First Statute of Westminster (*b*) inflicted a penalty for taking excessive tolls. Where the amount of toll is not specified, reasonable toll is implied (*c*). If unreasonable, the toll is void (*d*). A toll, reasonable in amount, but varying from time to time according to the value of money, is valid (*k*). The judge alone can decide whether the tolls are or are not unreasonable (*f*). If it has been paid for many years the presumption is that it is reasonable (*g*). In regard to stallage, if the owner of the soil of a market covers the market place so completely with stalls that the market people are obliged to use them, it is held to be taking excessive stallage (*h*). [149]

(*k*) *Lawrence v. Hitch* (1868), L. R. 3 Q. B. 521; 33 Digest 541, 194.

(*l*) *Yarmouth Corpn. v. Groom* (1862), 1 H. & C. 102; 33 Digest 545, 257.

(*m*) *Northampton Corpn. v. Ward* (1745), 2 Stra. 1238; 33 Digest 544, 246.

(*n*) *Townend v. Woodruff* (1850), 5 Exch. 506; 33 Digest 545, 258.

(*p*) *Newcastle (Duke) v. Workson Urban Council*, [1902] 2 Ch. 145; 33 Digest 540, 176.

(*q*) *Bedford (Duke) v. St. Paul, Covent Garden, Overseers* (1881), 51 L. J. (M. C.) 41; 33 Digest 539, 159.

(*r*) *Lockwood v. Wood* (1841), 6 Q. B. 31; 33 Digest 546, 273.

(*s*) *Ante*, p. 101.

(*t*) *Post*, p. 103.

(*u*) *Heddey v. Welhouse* (1598), Moore, K. B. 474; 33 Digest 540, 177; 542, 196.

(*a*) *Leight v. Pym* (1686), 2 Lut. 1329; 33 Digest 542, 197; see also *Bedford (Duke) v. Emmett* (1820), 3 B. & Ald. 366; 33 Digest 542, 195, and *A.-G. v. Tyne mouth Corpn.* (1900), 17 T. L. R. 77; 33 Digest 545, 263.

(*b*) 11 Halsbury's Statutes 440.

(*c*) *Pawlett v. Stamford Corpn.* (1831), 1 Cr. & J. 400; 33 Digest 541, 192.

(*d*) *Heddey v. Welhouse*, *supra*.

(*f*) *Lowdon v. Hierons* (1818), 2 Moore, C. P. 102; 33 Digest 544, 231.

(*g*) *Wright v. Bruister* (1832), 4 B. & Ad. 116; 33 Digest 544, 232.

(*h*) *R. v. Burdett* (1697), 1 Ld. Raym. 148; 33 Digest 545, 267.

An action lies for the recovery of tolls (*i*) and for use and occupation in regard to stallages (*h*) without any proof of an express contract to pay (*l*). [150]

The right to distrain is incident to every legal toll (*m*) and this is a right incident to the right to bring the goods to a market or fair (*n*).

The franchise of a market or fair may be forfeited for the taking of excessive tolls (*o*), but the neglect to take tolls is not a ground for the forfeiture of either the grant of a market or fair or of the franchise of toll (*p*). [151]

Under Statute.—A grant of a franchise of a market or fair, and of tolls and stallages in relation to them has been made in many local Acts (*q*). The provisions with regard to tolls in general Acts are contained in sections of the Markets and Fairs Clauses Act, 1847, which are incorporated in later general statutes and in many local Acts. The incorporation of these sections does not of itself confer the right to take tolls. Such rights must be conferred on the undertakers by the Act itself (*r*) or, *semble*, by a separate grant at common law. By the Food and Drugs Act, 1938 (*s*), local authorities are given power to provide markets and to purchase public or private rights in tolls for the purposes of the market, and to take stallages and tolls in respect of the use of their markets.

By sect. 13 of the Markets and Fairs Act, 1847 (*t*), where any special Act authorises tolls to be taken in a market, any person other than a licensed hawkers selling or exposing for sale (*u*) in any place within limits prescribed by the Act, except in his own dwelling place or shop, any articles (*a*) in respect of which tolls may be taken under the Act is liable to a penalty not exceeding forty shillings. A similar provision is contained in the Food and Drugs Act, 1938, sect. 50, in regard to markets belonging to local authorities.

By sect. 31 of the Act of 1847 (*b*), unless otherwise provided by the special Act, no stallage, rent or toll may be demanded or received until the market place or place for the fair is complete and fit for use; and by sect. 32 (*b*), the certificate of two justices is conclusive evidence that it is fit for use. The tolls and stallages are to be paid when demanded to the undertakers or their collectors or agents (sect. 33) (*c*), and anyone

(*i*) *Cock v. Vivian* (1734), 7 Mod. Rep. 203; 33 Digest 543, 227. See also *Prince v. Lewis* (1826), 5 B. & C. 363; 33 Digest 543, 302.

(*h*) *Taunton Market v. Kimberley* (1776), 2 Wm. Bl. 1120; 33 Digest 545, 265.

(*l*) *Newport Corpn. v. Saunders* (1832), 3 B. & Ad. 411; 33 Digest 545, 266.

(*m*) *Simpson v. A.-G.*, [1904] A. C. 476; 18 Digest 426, 1633. As to distraint under the Markets and Fairs Act, 1847, see *post*, p. 104.

(*n*) *Whitstable Free Fishers and Dredgers Co. v. Gann, Gann v. Johnson* (1861), 11 C. B. (N. S.) 387; 18 Digest 426, 1641. See also *Agar v. Lisle* (1613), Hob. 187; 18 Digest 427, 1642.

(*o*) See First Statute of Westminster; 11 Halsbury's Statutes 440.

(*p*) *Newcastle (Duke) v. Worksop Urban Council*, [1902] 2 Ch. 145; 33 Digest 540, 176.

(*q*) As to a grant of customary tolls in a local Act, see *Bedford (Duke) v. Emmett* (1820), 3 B. & Ad. 366; 33 Digest 542, 195.

(*r*) *Newton-in-Makerfield Urban Council v. Lyon* (1900), 81 L. T. 756; 33 Digest 554, 368, and *Philpott v. Allright* (1906), 70 J. P. 287; 33 Digest 554, 369.

(*s*) Ss. 44—49; 31 Halsbury's Statutes 282—284.

(*t*) 11 Halsbury's Statutes 457.

(*u*) See *Luke v. Charles* (1861), 25 J. P. 148; 33 Digest 554, 365; and note (*r*).

(*a*) See in regard to coal, *Johnson v. Atkinson* (1909), 101 L. T. 637; 33 Digest 555, 371; as to horses *Llandaff & Canton District Marketing Board v. Lyndon* (1860), 8 C. B. (N. S.) 515; 33 Digest 556, 380; and other cases on p. 555 of 33 Digest.

(*b*) 11 Halsbury's Statutes 462.

(*c*) *Ibid.*, 463.

assaulting or obstructing a collector is liable to a penalty not exceeding forty shillings (sect. 40) (*d*). [152]

Tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, are to be paid to the authorised person before these are weighed or measured (sect. 34) (*e*). Tolls in respect of cattle brought to the market for sale are to become due as soon as the cattle are brought into the market place, and before they are put into any pen or tied up in the market place; and if the cattle are not removed within an hour after the close of the market another toll for them will become due (sect. 35) (*e*). Tolls, rents and stallages may be changed from time to time provided they do not exceed the amount authorised in any Act in which the Markets and Fairs Clauses Act, 1847, is incorporated (sect. 36) (*e*), but anybody demanding or receiving a larger toll than authorised is liable to a penalty (*f*) not exceeding forty shillings (sect. 37) (*e*). By the Markets and Fairs (Weighing of Cattle) Acts, 1887 (sect. 8) (*f*) and 1926 (sect. 3) (*g*), the maximum tolls for weighing cattle are those specified in the schedule to the Act of 1926, or such other amounts as may be authorised by the M. of H. If any stallage, rent or toll is not paid when demanded it may be levied by distress on all or any of the cattle or other articles on which it is due (*h*). Any dispute concerning any toll or stallage is to be settled by a justice on application, and, in default of payment on demand of the sum awarded and of costs, it may be levied by distress (*i*).

A list in large and legible characters of the tolls and stallages payable must be set up conspicuously in the market, and these are not payable where the list is not set up, nor for anything not on the list (*k*). If, however, the list is destroyed, injured or obliterated they continue to be payable during the time reasonably required for it to be restored (*k*).

These sections of the Markets and Fair Clauses Act, 1847, are also incorporated in the Diseases of Animals Act, 1894 (*l*). [153]

Other Tolls.—Tolls may also be collected for various other services, either by grant, express or implied, or by statute. By sect. 21 of the M. of T. Act, 1919 (*m*), a committee was appointed, called the rates advisory committee, to give advice to the Minister of Transport with respect to and safeguarding any interests affected by any direction he might make as to rates, fares, tolls, dues or other charges.

Bridges and Highways.—Most important of the earlier tolls were those on bridges and in some cases on highways, and the latter were given great importance under the various Turnpike Acts (*n*). Apart from such an Act, or a royal grant, no highway can be dedicated to the public subject to the condition that tolls should be paid (*o*). The question of tolls on bridges and the provisions for their extinction

(*d*) 11 Halsbury's Statutes 464.

(*e*) *Ibid.*, 463.

(*f*) *Ibid.*, 481.

(*g*) *Ibid.*, 485. As to markets of local authorities, see Food and Drugs Act, 1938, s. 47 (2); 31 Halsbury's Statutes 283.

(*h*) 1847 Act, s. 38; 11 Halsbury's Statutes 463. As to liability for illegal distress, see *Wakefield Borough Market Co. v. Crawshaw* (1865), 29 J. P. Jo. 791; 18 Digest 427, 1647.

(*i*) S. 39; *ibid.*

(*k*) S. 41; *ibid.*, 464.

(*l*) By s. 32; 1 Halsbury's Statutes 406, which empowers local authorities to provide wharves, sheds, etc., for the landing, etc., of foreign animals.

(*m*) 3 Halsbury's Statutes 437.

(*n*) See 9 Halsbury's Statutes 45.

(*o*) *Austerberry v. Oldham Corpn.* (1885), 29 Ch. D. 750; 26 Digest 267, 71.

(which apply also to tolls on highways) are dealt with in the title BRIDGES (*p*). [154]

Canals.—"Toll" is also the word used in connection with the charge made on canals, and by the Regulation of Railways Act, 1873 (*q*), "canal" includes "any navigation which has been made under or upon which tolls may be levied by authority of Parliament." The matter is dealt with under the Canal Tolls Act, 1845 (*r*); the Regulation of Railways Act, 1873 (*s*); and the Railway and Canal Traffic Act, 1888 (*t*). [155]

Ferries.—The right to demand and receive tolls on ferries is included in ancient grants and is dealt with in the title on FERRIES (*u*). [156]

Tramways.—Under the Tramways Act, 1870, tolls and charges on tramways are provided for. They must be specified in the Provisional Order authorising the construction of the tramway (*a*), and when a local authority has provided or acquired a tramway, they may either lease the tramway and the right to the tolls or they may demand and take the tolls specified (*b*).

Where the M. of T. has granted a company or person a licence to use the tramway as well as the promoters or their lessees subject to payment of a toll (*c*) the licensee's carriages may be detained and sold in default of the payment of the toll (*d*), and if there is any dispute as to the amount it is to be settled by two justices (*e*). These provisions do not apply to the London Passenger Transport Board (*f*).

The promoters or lessees of a tramway authorised by special Act may also demand and take the tolls specified in the special Act, and a list of the tolls must be exhibited in a conspicuous place inside and outside the tramcar (*g*). [157]

Tolls in Local Government Returns.—By sect. 244 of the L.G.A., 1933 (*h*), which took the place of the Local Taxation Returns Acts of 1860 and 1877, a return is to be made to the M. of H. for each year ending on March 31 by every local authority, among other matters, of the sums received from any tolls or dues leviable under any enactment relating to markets, bridges or harbours, or of any other compulsory rates, taxes, tolls or dues. This, however, does not extend to (i.) rates, taxes, tolls or dues levied for the public revenue of the United Kingdom, or (ii.) tolls or dues taken by any statutory undertakers carrying on business for profit, or by any company within the meaning of the Companies Act, 1929, as revenue of their undertaking, or (iii.) tolls or dues taken by prescription or otherwise as property. The return is to be made by the clerk of the authority, unless the power of levying the toll is vested in a corporate body, then by their clerk or treasurer,

(*p*) Vol. II., p. 255.

(*q*) S. 3; 14 Halsbury's Statutes 199.

(*r*) 14 Halsbury's Statutes 84. See title CANALS, Vol. II., p. 892. As to distraint for non-payment, see *Jenkins v. Cooke* (1833), 1 Ad. & El. 372; 18 Digest 428, 1655, and *Fraser v. Swansea Canal Co.* (1834), 1 Ad. & El. 354; 18 Digest 428, 1656.

(*s*) *Ibid.*, 199.

(*t*) *Ibid.*, 220.

(*u*) Vol. V., p. 428.

(*a*) S. 10; 20 Halsbury's Statutes 9.

(*b*) S. 19; *ibid.*, 12.

(*c*) S. 35; *ibid.*, 21.

(*d*) S. 36; *ibid.*, 22.

(*e*) S. 39; *ibid.* As to disputes as to other tolls, see s. 56; *ibid.*, 29.

(*f*) London Passenger Transport Act, 1933, s. 100; 26 Halsbury's Statutes 843.

(*g*) S. 45; 20 Halsbury's Statutes 26.

(*h*) 26 Halsbury's Statutes 437.

and in both cases it is to be certified by the treasurer or other person whose duty it is to keep the accounts of the authority or corporate body. [158]

Exemption from Tolls.—Just as the right to receive tolls may be obtained by custom, grant, prescription or statute, so also may exemption from liability to pay them. An exemption for all inhabitants generally can only be proved by custom (*i*), but for the inhabitants of a limited class (*k*) or for ecclesiastical persons (*l*) or for persons such as the occupiers of houses abutting on the market (*m*) they may be claimed by prescription. An exemption acquired under a prescriptive right is not destroyed by a later grant (*n*). [159]

Exemption from tolls may be granted under local Acts (*o*), and the following are special exemptions made in general Acts :

Post Office Officials.—By sect. 79 of the Post Office Act, 1908 (*p*), any person who demands toll upon a highway, bridge or post road for any mail or any person, horse or carriage going for, or employed to go for any mail bag, is subject to a penalty not exceeding £5; and any ferryman who demands toll, or who does not convey the mail (if it be possible or safe to do so) within fifteen minutes after demand, is liable to a like penalty.

The privilege of post office officials does not apply to a ferry (not being an ancient legal ferry) which a statutory corporation is authorised to work but not obliged to maintain (*g*). By sect. 4 of the Ferries (Acquisition by Local Authorities) Act, 1919 (*r*), exemption from toll on ferries acquired by local authorities is given to all persons on duty in the service of the Crown, and any animal, vehicle or goods belonging to or being used in the service of the Crown, and to police officers on duty, and to mail bags. [160]

Police.—Exemptions are given to police officers by sect. 1 of the County Police Act, 1840 (*s*). [161]

Royal Forces.—By sect. 143 of the Army Act, 1881, all officers and soldiers of His Majesty's regular forces on duty or on march and their horses and baggage, and prisoners under military escort are exempted from tolls on embarking or disembarking from any wharf or quay, or in passing along any road or bridge, but not from tolls for boats used on a canal (*t*). This section is applied to the reserve forces by sect. 23 of the Reserve Forces Act, 1882 (*u*), to the territorial army by the Territorial and Reserve Forces Act, 1907 (sect. 28 (2) (*a*)), and to the Air Force by the Air Force Act passed annually (*b*). [162]

(*i*) *Lockwood v. Wood* (1841), 6 Q. B. 31; 33 Digest 546, 273.

(*k*) As for the Duchy of Lancaster, see *Osbuston v. James* (1688), 2 Lut. 1377; 33 Digest 547, 286.

(*l*) *Middleton (Lord) v. Lambert* (1834), 1 Ad. & El. 401; 33 Digest 547, 294.

(*m*) *Ellis v. Bridgnorth Corpn.* (1863), 15 C. B. (N. S.) 52; 33 Digest 585, 119.

(*n*) *Truro Corpn. v. Reynolds* (1832), 8 Bing. 275; 33 Digest 547, 281.

(*o*) See *Fearnley v. Morley* (1826), 5 B. & C. 25; 33 Digest 547, 285.

(*p*) 13 Halsbury's Statutes 69.

(*q*) *A.-G. for Ireland v. Londonderry Bridge Comrs.*, [1903] 1 I. R. 389; 24 Digest 974, f.

(*r*) 8 Halsbury's Statutes 661.

(*s*) 3 & 4 Vict. c. 88.

(*t*) 17 Halsbury's Statutes 208.

(*u*) *Ibid.*, 257.

(*a*) *Ibid.*, 292.

(*b*) See s. 143; *ibid.*, 381.

TOLLS, RATING OF

See RATING OF SPECIAL PROPERTIES.

TOWN CLERK

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Appointment.—The town clerk is a statutory officer, holding his appointment under the L.G.A., 1933 (*a*). He must be “a fit person” and he holds his office “during the pleasure of the council.” He may not be a member of the council, and he may not act as borough treasurer or be elective auditor. The appointment must be at such reasonable remuneration as the council may determine. A vacancy in the office of town clerk must be filled within twenty-one days after its occurrence. [163]

By sect. 115 of the L.G.A., 1933 (*b*), a local authority who appoint a town clerk have power to appoint a deputy of that officer for the purpose of acting in his place whenever the office is vacant or its holder is for any reason unable to act. Any person so appointed as deputy, when acting as such and subject to the terms of his appointment, is to have all the functions of the holder of the office. [164]

Most town clerkships are full-time appointments and the holder is usually required to devote his whole time to the duties of the office. In a few small boroughs, however, a part-time town clerk, usually a solicitor in private practice in the borough, is sometimes appointed.

The appointment of a town clerk must be under seal (*c*). [165]

Qualifications.—It is usual practice nowadays for borough councils to appoint qualified solicitors as their town clerks. The question whether town clerks (as well as clerks to urban and rural district councils) should necessarily have legal qualifications was discussed in the Report of the Departmental Committee on Recruitment, Qualifications, Training and Promotion of Local Government Officers (*d*). After pointing out that in the majority of cases local authorities selected

(*a*) S. 106 ; 26 Halsbury's Statutes 361, 362.

(*b*) 26 Halsbury's Statutes 367.

(*c*) *R. v. Stamford Corpn.* (1844), 6 Q. B. 433.

(*d*) Published by H.M. Stationery Office (1934) [1s. 6d.].

their clerks from persons so qualified, and that many authorities of moderate size found it necessary to combine the duties of clerk and legal adviser, the committee expressed the view that, generally speaking, the balance of convenience pointed to the selection as clerk of a person with legal qualifications.

The committee summed up its conclusions by saying that in its opinion the clerk of the council must be the principal officer of a local authority and responsible for securing co-ordination between the several departments. The success of the clerk in discharging this function would obviously depend on his personality and on the relations which he established with the other chief officers of the council.

"The clerk is the chief administrative officer of the council. The council will look to him for advice on all major questions. He is the channel of their official correspondence, and responsible for the conduct of important negotiations on their behalf. The clerk should co-ordinate the work of the several departments, should keep in touch with the decisions of each of the committees, and should exercise a general supervision over all the work without interfering with heads of departments in strictly technical questions.

"These seem to us to be the main functions of the clerk. Where he is a solicitor he is ordinarily required to be responsible, in addition, for the legal business of the authority, with competent assistance in the larger offices; but his administrative functions are the more important."

Official correspondence between the local authority and Government departments should be conducted on the side of the authority through the clerk, a clear distinction being drawn between such correspondence and similar correspondence between professional officers of the authority and of the department on professional points, whether as a preliminary to the framing of the policy of the council or otherwise.

This view was somewhat amplified by Sir Arthur Robinson in the evidence which he gave on behalf of the M. of H. before the Royal Commission on Local Government (*e*). He thought that the clerk should have a surveying eye on the whole of the work of the council and said that there was a sphere for the professional officer which was a distinctly professional sphere in which the clerk as the general administrator did not interfere, but that, where a professional sphere impinged on the general sphere of policy of the council, then the clerk came in. [166]

Sect. 284 of the P.H.A., 1936 (*f*), provides that where notices or orders or other documents under that Act require authentication by the local authority, the signature thereof by the clerk is a sufficient authentication (*ff*).

The town clerk acts as clerk and legal adviser to the council and its committees in respect of its various functions, and an important and responsible part of his duties is to see that his council, in any scheme or work which it carries out, is not infringing the statutory regulations and limitations which have been imposed upon it. He is, moreover, responsible for minuting the decisions of the council and its committees and acts consequently as the interpreting medium of instructions which

(*e*) Cmd. 3436, p. 185.

(*f*) 29 Halsbury's Statutes 505.

(*ff*) Cf. model standing order No. 28, in the series of model standing orders issued from the M. of H.

are sometimes not definite and of the limits implied in decisions. In practice he is frequently the unofficial referee as between official and official and between committee and committee where functions may overlap or merge into one another. [167]

Dismissal or Removal from Office.—The town clerk is in a similar position as regards appointment and dismissal to that of most of the other officers of the council (*g*). The approval of a central Government department is not required for his appointment or dismissal.

Sect. 121 of the L.G.A., 1933 (*h*), which was a new provision included in the Act in order to change the law laid down in *Brown v. Dagenham U.D.C.* (*i*), provides that notwithstanding any provision in the L.G.A., 1933, or any other enactment, that a person holding any office shall hold the office during the pleasure of a local authority, there may be included in the terms on which he holds the office a provision that the office shall not be determined by either party without giving to the other party such reasonable notice as may be agreed, and that where, at the commencement of that Act an officer of the local authority held office on terms which purport to include such a provision, those terms should as from the commencement of the Act be deemed valid. [168]

Rights and Duties.—With few exceptions, the duties of town clerk are not specified in the statutes. As we have seen, he must be “a fit person” to hold the office, and certain specific duties are imposed upon him. For example, he is responsible for the charge and custody of the charters, deeds and muniments of the borough, for the preparation and publication of electors’ lists, for the preparation and conduct of elections of councillors, the keeping of the freemen’s roll, the issuing of notices convening meetings, the countersigning of orders by the council for payments (except certain specified payments) out of the general rate fund, and for making certain returns to the M. of H. [169]

He has certain statutory duties under Acts other than the L.G.A., 1933. Under the Local Land Charges Rules, 1927 (*k*), he is the local registrar, responsible for the registration of local land charges and the issue of official certificates of search. By sect. 12 (2) of the Representation of the People Act, 1918 (*l*), where a registration area is a parliamentary borough and is coterminous with, or wholly contained in, one municipal borough, the town clerk of the borough shall be the registration officer for the area. In that capacity he is responsible for the preparation of the lists and registers of parliamentary and local government electors. Sect. 24 (2) of the L.G.A., 1929 (*m*), imposes on town clerks of a county borough certain general powers of supervising the administration within the borough of the provisions of the Acts, relating to the registration of births, deaths and marriages. Again, town clerks of metropolitan boroughs are, by statute, clerks to assessment committees (*n*). But to many important duties which the town clerk in fact performs, there is no specific reference in any Act of Parliament. For example, the duty of acting as legal adviser to his

(*g*) See title APPOINTMENT AND DISMISSAL OF OFFICERS.

(*h*) 26 Halsbury’s Statutes 370.

(*i*) [1929] 1 K. B. 737; Digest (Supp.).

(*k*) 15 Halsbury’s Statutes 671.

(*l*) 7 Halsbury’s Statutes 548.

(*m*) 10 Halsbury’s Statutes 901.

(*n*) L.G.A., 1929, s. 18; 10 Halsbury’s Statutes 895.

council is not imposed by statute, nor is the responsibility for keeping the minutes of the council and its various committees. [170]

Among the duties which are customarily performed by the town clerk, or under his supervision, are the transaction of all the legal business of his council, the making of all requisite applications for the approval of schemes by the appropriate Government departments, and the conduct of cases or instruction of counsel on behalf of his council at all arbitrations or public inquiries in which his council are parties or otherwise interested. The town clerk advises his council with regard to powers which they may wish to acquire by means of Private Bill legislation and also with regard to petitions against proposed legislation which may affect their interests; and, together with his parliamentary agents, he takes the necessary steps as regards the promotion and opposition to any bills. He is responsible for seeing that land or property which is authorised to be acquired compulsorily by his council is duly transferred to them and undertakes all conveyancing work regarding the sale, letting or purchase of properties on behalf of his council. The litigious work with which the town clerk is concerned comprises the defence of actions brought against his council in the High Court, and the institution of proceedings therein. In many instances the town clerk acts as prosecuting solicitor in cases committed for trial at Courts of Assize and quarter sessions by the borough magistrates, and prepares these cases for trial at the courts to which they are committed. In some quarter sessions he is Clerk of the Peace. In their capacity as municipal traders or owners of housing estates, borough councils often find it necessary to have recourse to the county court for the recovery of moneys due to them, and this work forms another important part of the town clerk's responsibilities. Again, the town clerk is responsible for the conduct of a great variety of police court cases, usually concerned with breaches of bye-laws, and offences under the P.H.A., 1936, the Housing Act, 1936, the Food and Drugs Act, 1938, the Education Act, 1921, and other statutes. [171]

The town clerk frequently acts as legal adviser or secretary to joint committees on which his council are represented and as clerk to the trustees of local charities. [172]

The town clerk is generally recognised as the chief administrative officer of his council, and he holds a special position with respect to all the departmental heads of the departments of the council. These officers normally exercise their functions independently of the town clerk, but seek his advice as occasion may require. As in many of their duties they act upon the instruction of the council or its committees, such instructions are frequently transmitted through the town clerk. Having regard to the various functions exercised by a municipality through its trading and non-trading undertakings, and to the varying grades of technical officers who are employed by it, who work with a certain amount of independence under entirely separate committees, it is desirable that some officer should be recognised as the link between them all, and be given the function, power and prestige of co-ordinating officer. [173]

It is the practice of many councils to approve a specific list of duties for each of their chief officers. The variety and scope of the duties of the town clerk may be judged from the following list:

1. The town clerk shall be the chief administrative and executive officer of the council, and shall also act as solicitor to the council.
2. He shall be the council's executive officer in communicating the

orders of the council and of the respective committees to the departmental officers, and shall advise the establishment committee on questions relating to the appointment, duties, promotion, superannuation and dismissal of the members of the staff, the allotment of rooms amongst different departments, and other questions of the internal arrangements of the council's offices and staff.

3. He shall conduct the correspondence of the council and of its committees, and shall have charge of and be responsible for all bonds, securities, records and documents of the council, other than those deposited at the public library and in the custody of the borough librarian and except insurance policies, the general ledger and borough treasurer's cash book and books subsidiary thereto, and current departmental correspondence, documents and plans.

4. He shall attend all meetings of the council and shall be responsible for the preparation, printing or duplicating and due transmission of the council's agenda papers and minutes, and the agenda papers, reports and minutes of all committees.

5. He shall be clerk to all committees of the council.

6. He shall countersign all orders for payment made by the council.

7. He shall be responsible for the preparation and publication of the annual report and proceedings of the council.

8. He shall report to the general purposes committee every resolution of the council in the nature of a standing order, and submit to the committee a draft standing order to give effect thereto.

9. He shall from time to time, as they arise, report to the general purposes committee any new powers and duties conferred upon or vested in the council; and advise the committee whether they fall within the existing powers delegated to committees or whether additional or supplemental instructions are required.

10. He shall keep a register of all deeds relating to properties belonging to or acquired by the council.

11. He shall sign, on behalf of the council, all contracts which it may be necessary for the council to enter into for the acquisition of interests in properties which the council may decide to purchase.

12. He shall prepare all bonds, contracts and agreements entered into by, with, or on the part of the council and shall transact or be responsible for transacting, all the legal business of the council, whether parliamentary, conveyancing, advocacy, litigious or otherwise.

13. He shall advertise the requirements of the council, receive all tenders, applications, etc., forwarded to the council in response thereto, and make such inquiries as to the council or the committees concerned may order respecting persons tendering.

14. He shall be responsible for the letting of the public assembly hall, the library halls and other buildings belonging to the council.

15. He shall be registration officer for the borough and perform all duties appertaining thereto.

16. He shall perform all duties connected with the election of borough councillors, and shall advise the returning officer at such elections, and at any other elections for which the mayor, borough council or town clerk may be responsible.

17. He shall be the local registrar for the purpose of the registration of local land charges within the borough.

18. He shall devote his whole time to the duties of his office and shall discharge all statutory duties now or hereafter appertaining

thereto, and such duties as the council may, from time to time, by standing order or otherwise, require him to perform. [174]

Practical Conduct of Duties.—In considering the practical conduct of duties of a town clerk, reference should be made to his relationships with :

The Mayor.—It is obviously both desirable and necessary that the mayor and the town clerk should be in close contact and, in practice, most mayors frequently consult their town clerks with regard to questions of procedure and the proper handling of numerous problems.

Chairmen of Committees.—As in the case of individual members of the council, the chairman of a committee has, in theory, only such power and authority as may be bestowed upon him by his committee or by the council. In practice, however, he is vested with power to act in cases of emergency or urgency. Before a council goes into recess, it is customary for it to adopt a resolution empowering the respective chairmen and/or vice-chairmen of all standing committees to act in matters of emergency which may be brought to their notice, until the next ordinary meeting of the council.

Not only during such periods of recess, but in the course of day-to-day administration, the town clerk is frequently consulted by chairmen of the various committees of the council. Most chairmen have a technical adviser in charge of the particular department—for example, the borough engineer in respect of the highways or works committee, the M.O.H. in respect of the public health committee, etc. But the enthusiasm of the department may occasionally have to be curbed in the interests of co-ordination. In such circumstances the town clerk has to exercise his right and duty and to advise any committee or the council.

Committees.—The town clerk or his representative attends all meetings of the council's committees. In addition to keeping a record of the proceedings and advising upon points of law and practice, the town clerk should always bear in mind the importance of co-ordinating the work of the council as a whole, and of preventing, as far as possible, disputes between committees. In this he is, of course, helped by the standing orders of the council and by the terms of reference to its various committees.

The Council.—Councils, as a rule, meet once a month and review the more important matters which during the preceding four weeks have occupied the attention of perhaps twenty or thirty committees. At the council meeting, the town clerk may be required to advise the mayor on questions of procedure and on the construction of the council's standing orders. At meetings of the council and on ceremonial occasions it is customary for the town clerk to wear a wig and gown.

Chief Officers.—The relationship between the town clerk and the other chief officers of the council should obviously be one of close co-operation, frankness and mutual trust. It is impossible for a town clerk to carry out his duties satisfactorily without the support and collaboration of his colleagues. Regular conferences between the town clerk and the other chief officers are of great value in securing efficient administration. Not only is the town clerk assured that no important scheme comes to his attention for presentation to the council from one department without having been considered by other departments concerned, but the committee promoting the scheme is enabled to obtain the observations of the other departments before reaching a decision. [175]

The Society of Town Clerks.—A professional association called the

Society of Town Clerks was founded in 1928 and now comprises in its membership nearly all the town clerks in England and Wales. It has for its object the promotion of the professional knowledge of town clerks and the consideration of all matters affecting the status, duties and responsibilities of town clerks. For this purpose the society circulates literature, and holds meetings and conferences, in some cases with other associations and bodies, and interests itself in all matters affecting administration of municipal and local government (*nn.*) [176]

London.—The town clerk of a metropolitan borough is appointed by virtue of sect. 76 of the London G.A., 1939 (*o*).

The town clerk and borough treasurer must not be in the same person. The town clerk must be "a fit person" and he holds office "during the pleasure of the council." All town clerkships in the metropolitan area are full-time appointments and, whilst no special qualifications are required by statute, most councils require a legal qualification, and the town clerk is, in such cases, the legal adviser to the council.

The rights and duties of a metropolitan town clerk are similar in most respects to those of a town clerk appointed in pursuance of the L.G.A., 1933 (*supra*, p. 109). Most of the general statutes relating to local government administration apply to London, and when some do not so apply, either wholly or partly (*e.g.* the P.H.A., 1936), substantially similar Acts are enacted with special application to London (*e.g.* the P.H. (London) Act, 1936).

The following duties among others are placed on the town clerk by statute: preparation of voters' lists and jury lists (London G.A., 1899, sect. 11) (*oo*); registration officer (Representation of the People Act, 1918, sects. 12 and 16) (*p*); clerkship of the assessment committee (L.G.A., 1929, sect. 18 (*h*)) (*q*); registration of mortgages and transfers of mortgages of the borough council for raising money under the London G.A., 1939 (sect. 130) (*r*); counter-signing of the borough council's orders for payment (sect. 122) (*s*); receipt of declarations of acceptance and notices of resignation of office (sects. 36, 37) (*t*); signature of meeting (sect. 50 (3), Sched. III., Part II) (*u*); summonses to attend returning officer at elections of borough councillors (sect. 28) (*a*).

A deputy town clerk may be appointed (London G.A., 1899, sects. 82, 83) (*b*). As to the town clerk of the City of London, see title CITY OF LONDON. [177]

The Association of Metropolitan Town Clerks.—The Association of Metropolitan Town Clerks was founded in 1919, membership of this body being open to all town clerks in the administrative county and City of London.

Its objects are similar to those of the Society of Town Clerks, though its activities necessarily have special reference to the metropolis, and since 1932 it has become the London branch of that society.

(*nn*) The Hon. Secretary of the Society is R. H. Jerman, Esq., O.B.E., M.C., M.A., Town Clerk, Wandsworth, of the Editorial Board of this work.

(*o*) 32 Halsbury's Statutes 296.

(*p*) 7 Halsbury's Statutes 555, 558.

(*r*) 32 Halsbury's Statutes 319.

(*t*) *Ibid.*, 279.

(*a*) *Ibid.*, 275.

(*oo*) 11 Halsbury's Statutes 1232.

(*q*) 10 Halsbury's Statutes 895.

(*s*) *Ibid.*, 316.

(*u*) *Ibid.*, 284, 372

(*b*) *Ibid.*

TOWN CRIER

Town criers are to most town dwellers relics of the past, but in the days when a great proportion of the laity was illiterate the public crier was a national institution, and as the only medium of publicity must have been an important official. His duties were most varied. His cries related to things lost and found, sales by auction and private contract, weddings, christenings and funerals, the cause of the condemnation of criminals and other matters of public concern. He was the principal organ by which the mediæval shopkeeper obtained publicity. In the sixteenth century, when Londoners were under a duty to hang lamps before their doors for street lighting, it was the crier who passed through the streets to remind them to look to their lights.

Gradually the newspaper, street poster, the travelling van and other methods of announcing superseded the town crier.

There are still some towns which retain the office of town crier, who usually combines his duties in that capacity (for which he is paid a nominal retaining fee) with other duties largely of a ceremonial nature.

In Lyme Regis there is still a town crier appointed by the town council, whose office goes back for centuries. The crier also is paid for by the persons wishing the cries to be made. The crier also acts as mayor's attendant and sergeant-at-mace, in which capacity he attends the mayor on ceremonial occasions. He is paid a nominal salary and provided with a uniform.

In Marlborough the town crier is the borough beadle. His duties in modern days consist of serving notices and attending in uniform on ceremonial occasions. He is authorised to act as town crier and to retain the fees which he receives for crying. The name "beadle" signifies that he is the bidder or crier of the parish.

The appointments in many cases are made under charter or long established custom.

Although there does not appear to be any objection to a local authority appointing a town crier, providing him with a uniform and regulating his charges, as has been done in Weymouth and other places, doubts have been expressed as to whether there is any power to pay him out of the rates. There are no specific statutory powers to appoint such an officer. Councils of counties, boroughs and districts respectively are empowered to appoint such officers as they think necessary for the efficient discharge of their functions and to pay such officers such reasonable remuneration as they may determine (*a*). The word "officer" includes servant (*b*).

It is conceived that these provisions enable a local authority to appoint a town crier and pay him reasonable remuneration for such services as he renders to the council in the discharge of their functions; and there may even in modern days be towns where the best and most suitable form of publicity for official announcements would be that of a town crier. If a local authority make such an appointment, they cannot prevent other people acting as criers, although a town crier may by custom have a monopoly of certain cries, in which case he cannot refuse to cry anything which is included in that monopoly. [178]

(*a*) P.H.A., 1875, s. 189, and L.G.A., 1933, ss. 105—107; 26 Halsbury's Statutes 361—362.

(*b*) L.G.A., 1933, s. 305; 26 Halsbury's Statutes 467.

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COMPULSORY PURCHASE OF LAND ;	TOWN PLANNING AUTHORITIES ;
CONTROL OF ELEVATION ;	TOWN PLANNING SCHEMES.

Early Legislation.—Town planning first became a subject of legislation as part of the Housing, Town Planning, etc., Act, 1909 ; and in essential respects the structure of all subsequent town planning Acts has conformed to the provisions of that Act. Before 1925, when a consolidating Town Planning Act was passed, town planning continued to be merged in housing legislation, and this fact influenced the scope of provisions, in respect of their leaning towards improvement of new housing developments in towns and in garden cities.

The earlier Acts were limited in their application to land “ in course of development or likely to be used for building purposes,” and had limits in other respects, in contrast to the present amplified legislation. Some added powers were given in the Housing, Town Planning, etc., Act, 1919. These included the power to “ permit ” building development while a planning scheme was being prepared, which was the origin of “ interim development.” Provisions were made also in other Housing Acts of 1919 and 1921 for assisting associations to acquire and develop garden cities or garden suburbs and for the Public Works Loan Commissioners to advance money for such developments.

As explained later, “ interim development ” procedure has gradually become of great importance in connection with the practical application of town planning—while the provisions to help garden cities have remained practically unused.

given wider scope than in the early Acts, to give protection to places of special architectural, historic or artistic interest.

The effect of the Town Planning Act, 1925, was not only to consolidate town planning provisions in one Act, but to inaugurate the independence of town planning from housing legislation.

The L.G.A., 1929, contained important provisions affecting administrative control. The responsible authorities for town planning before 1929 were borough, urban and rural district councils, or joint bodies formed by these councils, except in London, where the authority was the county council. The 1929 Act provided for county councils being constituent members of joint planning bodies, with certain powers to enforce combined action for planning purposes.

The foregoing in brief summary indicates the character of town planning legislation before 1932 in three directions: firstly, in close liaison with housing; secondly, in beginning to secure protection of amenities of architectural and historical interest; and thirdly, in enlarging geographical scope to county or regional areas.

It is noteworthy that none of the enlarged powers in town planning Acts have related to roads. Whereas in practice it is impossible to separate roads from town planning, the fact that the administration of town planning has been under the M. of H., and the administration of highways and roads under the M. of T., has resulted in an artificial separation of legislative powers relating to these two phases of one subject. This duality of legislation and administration cannot be justified on any sound principle. Probably the most urgent need of improvement of town planning legislation is to consolidate town planning and road planning, including control of ribbon development. [179]

The Act of 1932.—The Town and Country Planning Act, 1932 (*a*), based on a Bill prepared in 1930, and put forward by two separate governments in 1931 and 1932, could not be expected to be a completely satisfactory piece of legislation. The bill suffered much in committee of the House of Commons, and the difficulties of its application, largely arising from amendments there made, offset much of the value of its wider range of powers. It achieved both simplicity and practical value by bringing "any land," whether there are or are not buildings thereon, within the scope of planning schemes (*b*). The fact that the M. of H. can disapprove the inclusion of land that is already built upon, or is not likely to be developed, does not seem to limit the scope, as is indicated by the inclusion of the whole of London in a scheme. Its emphasis on the preservation and protection of amenities constituted its chief enlargement of scope in the field of control. [180]

The local authorities under the Act, joint committees and combination of authorities (*c*), and the procedure in connection with the preparation and adoption of, and the contents and effect of (*d*), schemes are dealt with in special articles (*e*). [181]

Under sect. 6 the first step by the authority (*e*) is to pass a resolution to prepare a scheme. Where a joint committee prepare a scheme it may be known as a regional scheme and supplementary schemes may be prepared for areas comprised in regional schemes. (There is no definition of "regional" schemes in sect. 53) (*f*). [182]

Interim Development.—Emphasis needs to be given to the fact that as soon as a resolution is passed by the authority and approved by the

(a) 25 Halsbury's Statutes 470.

(b) S. 1; 25 Halsbury's Statutes 472.

(c) Ss. 2, 3, 4, 5; *ibid.*, 472-475.

(d) Ss. 6-13; *ibid.*, 475-486.

(e) See titles TOWN PLANNING AUTHORITIES AND TOWN PLANNING SCHEMES.

(f) 25 Halsbury's Statutes 520; see title REGIONAL PLANNING.

M. of H., the control of "interim development" comes into operation (g). As interim development means development between the date on which the *resolution takes effect* and the date of *coming into operation* of the scheme, the result is to give the planning authority control for very lengthy periods. For example, some schemes which were begun under the 1909 and later Acts, and were uncompleted on the passage of the 1932 Act, are still uncompleted and may remain so for some years, while interim development control is being exercised by the authority. Furthermore, some authorities have openly claimed that they prefer to suspend the completion of their schemes as long as possible because they are content with the operation of interim development control.

To defer action in applying some powers of the Act, while maintaining the continuous application of other powers, is questionable procedure, which might in its aggregate effects go far to defeat the objects of the Statute. In any event the application of interim development control without continuity in bringing the scheme to completion is inconsistent with the principles of town planning, because it means negative control without a positive planning foundation for development. Moreover, it has the unfortunate result of producing uncertainty to owners of property in connection with a matter in which co-operation is expected, remembering that the highest possible degree of certainty is essential as a basis for co-operation. [183]

The advantages to the authority of the powers to control interim development are very great, but they can only be so in a real and permanent sense, if the control is exercised as a subordinate part of the machinery in preparing planning schemes (h).

The principles underlying interim development procedure are that the authority has some positive ideas for development, that the owner may develop in harmony with these ideas and at no risk, but that where he develops without consent he risks having his building pulled down without compensation, if it is proved that it contravenes the scheme.

One unfortunate disadvantage is that this procedure, for reasons that must be obvious, encourages temporary erections that may be more injurious than permanent structures of the kind that would not wholly comply with the scheme. On all grounds it is of great importance that the control of interim development should be carried out in co-operation with owners (i), and that undue delays in completing schemes should be avoided.

The importance of this phase of town planning is indicated by the facts that in February, 1939, 25,200,000 acres in England and Wales were subject to interim development control and only about 340,000 acres were comprised in operative schemes. The authorities preparing schemes included 141 joint committees. [184]

Planning authorities should recognise the Act as primarily a measure to promote constructive planning in accordance with the list of matters to be dealt with set forth in the Second Schedule and in the model clauses issued by the M. of H. (k). A matter of particular importance which has been a prominent feature in all Acts is the control of the space about buildings, known as "density zoning," involving the regulation of their size, height, design and external appearance. Restrictions on user ("character zoning") have existed in a limited sense since the P.H.A., 1875, placed restrictions on offensive trades (l).

(g) S. 10; 25 Halsbury's Statutes 482. See also 103 J. P. Jo. 98.

(h) See also 103 J. P. Jo. 512.

(i) See title TOWN PLANNING AGREEMENTS WITH OWNERS.

(k) See title TOWN PLANNING SCHEMES.

(l) See title OFFENSIVE TRADES.

The provisions for acquisition of land have a bearing on all constructive proposals (*m*). [185]

Responsibility of Local Authorities.—As has been indicated, the initiative in preparing schemes under the Acts rests with local authorities. After the resolution stage the authority proceeds to prepare a draft scheme and, subsequently, the scheme for submission to the M. of H. In all stages it has the benefit of the guidance afforded by the model clauses of the M. of H. Revised editions of model clauses are issued at intervals. The success in preparing the draft scheme will depend largely on the ability of the authority to collaborate with owners and meet reasonable objections.

The authorities are primarily responsible for delays involved in carrying through the stages up to the submission of the scheme to the M. of H. There are prescribed periods for completing each stage, but these are not rigidly enforced and long delays occur in practice, in some instances, as already indicated, owing to the contentment of authorities with interim development control. It is calculated that a reasonable time to carry through a scheme to completion is four or five years, but this period is being exceeded in many cases. The delays are becoming a cause of strong criticism and a menace to the smooth working of the Act. During periods of war it is inevitable that serious delays will occur, but at other periods delays which result in holding up schemes beyond four or five years are, as a rule, unnecessary and productive of much loss and conflict with owners of property. [186]

Responsibility passes from the authority to the M. of H. when the scheme is submitted for the Minister's approval. In order that the scheme may be carried through this final stage with the least friction and delay, it is important that the officials of the authority consult the appropriate officials of the Ministry in all preparatory stages regarding modification of the model clauses, details of procedure and questions of principle involved in connection with proposals. [187]

It is now necessary for a scheme to receive the consent of Parliament before it becomes operative. One of the omissions made in the Act of 1932 consisted of the words "as if it were enacted in this Act," which terminated the controversy as to the precise meaning of this phrase and removed ambiguity as to the power of Parliament to modify schemes. While the present Act provides for making a scheme a valid instrument, it also provides for the application of checks by Parliament and the courts. [188]

Private Ownership and Compensation.—It is desirable that the planning authority should endeavour to secure agreement with private owners, so as to achieve, firstly, the highest degree of collaboration in making a scheme constructive in form and details; secondly, to avoid unreasonable injury to property; and, thirdly, to facilitate completion in the final stages.

In a sense, the provisions in a planning scheme are comparable to ordinary building bye-laws that have been imposed on owners since 1875. But planning regulations cannot possess the qualities of certainty and uniformity of application which are essential in the bye-law system, and therefore cannot be applied without injurious affection to the interests of property owners.

Therefore, in all planning Acts provisions have been included for payment of compensation for injurious affection. But, beginning with the Act of 1909, Parliament adopted the qualifying principles,

(*m*) See titles ACQUISITION OF LAND; BETTERMENT; COMPENSATION FOR TOWN PLANNING; COMPENSATION ON ACQUISITION OF LAND; COMPULSORY PURCHASE OF LAND.

(1) that compensation would not be payable in certain classes of cases, *e.g.* in prescribing the spaces about buildings for certain purposes; and (2) that where property could be shown to have increased in value the authority could claim betterment from the owner. The provisions for these qualifications have added to the complications of the Act. It is inevitable that this is so and that the provisions in the Act of 1932 covering questions of compensation and betterment are involved and elaborate (*n*). [189]

The M. of H. is presumed to have power to exclude compensation in respect of eleven matters that are specified (*o*). His power is, however, qualified by the fact that compensation can only be excluded by a provision of the scheme, and as the scheme must be laid before Parliament for approval the final responsibility to decide whether the case for exclusion is reasonable rests with Parliament. Nevertheless the model clauses of the M. of H. prepared for the guidance of planning authorities, are drafted on the assumption that the right to compensation is excluded as provided in the Act, subject to the Minister's being satisfied that exclusion is reasonable.

In practice the recovery of betterment presents such difficulties that the value of the provisions for making claims seems to be limited to cases where such claims can be used with propriety to offset claims for compensation. [190]

Rural Zoning.—Experience in the working of the Act of 1932, dealing as it does with country as well as town planning, has revealed certain difficulties in applying the system of restriction of buildings per acre which has come to be designated as "density zoning." Therefore, the M. of H. has adopted a system of rural zoning on the recommendation of the Advisory Committee on Town and Country Planning. The method proposed and embodied in a new model clause is to zone certain areas that are not likely to be used for ordinary building purposes, for the erection of country houses in large plots or for agricultural estates. The principle is to provide for so many acres per house, instead of so many houses per acre. It is not clear whether this principle can be applied without the authority's having to face heavy claims for compensation. Whatever powers of control over private property are effected by the Act, it is not likely to be regarded as reasonable to confiscate private values even when these are limited to potential building values. Where, however, an authority agrees with an owner to have his estate permanently zoned as "rural," the arrangement may prove beneficial in both the public and the private interest.

In connection with the foregoing, and with many matters affecting private interests and the assessment of compensation or of betterment, great difficulties are certain to arise when schemes become operative to any great extent. This is a primary reason why it is highly important to secure as many of the benefits of town planning as is practicable, by means of agreements with owners. The Act makes special provision for agreements (*p*) to be entered into to restrict the planning, development or use of land, and to preserve private open spaces.

As already stated, no advantage has been taken of the provision

(*n*) Ss. 18—24; 25 Halsbury's Statutes 492—501. See titles BETTERMENT; COMPENSATION FOR TOWN PLANNING.

(*o*) S. 19; 25 Halsbury's Statutes 492.

(*p*) S. 34; *Ibid.*, 506. See title TOWN PLANNING AGREEMENTS. See also Air Navigation Act, 1920, s. 5; 19 Halsbury's Statutes 196; title AERODROMES, and Restriction of Ribbon Development Act, 1935, s. 13; 28 Halsbury's Statutes 91.

of the Act designed to facilitate the acquisition of land for garden cities (*g*) and the raising of public funds for the purpose. The reasons for this inaction seem to be quite independent of the merits or demerits of the facilities offered in the Act for promoting such enterprises. [191]

Statutory undertakers have special protection (*r*) from the application of provisions in a scheme in respect of land which is held or used by them for purposes of their undertaking. If, however, they are unreasonable in withholding consent to the application of any particular provision, an appeal may be made to the Minister. [192]

There are two questions of zoning, not already referred to, and one question relating to private open spaces, to which special attention should be given in negotiations with owners. These are :

Temporary Restriction under General Development Order.—This restriction should be imposed for the purposes set forth in the Act and after careful study of conditions. It should not be used as an instrument to prevent developments except where this prevention is essential to serve the objects set forth in sect. 16 (2) of the Act (*s*). [193]

Permanent Restriction or Prohibition of Building Development.—As a rule this drastic restriction should not be imposed without agreement with the majority of owners concerned in any area proposed to be restricted. [194]

Private Open Spaces.—The reservation of private open spaces can be made by agreement under sect. 84 of the Act (*ss*) : see p. 124, *post*, as to scheduling of an agreement to the scheme, if it is intended to continue after the scheme comes into operation. They should be for as long a period as the owner will agree to, and not less than ten years. Unless such private spaces are permanent the M. of H. will require that the areas included in them shall be zoned for the same uses and densities as adjoining land, such zoning to take effect when the area ceases to be a private open space. As a rule, private open spaces should not be reserved in any other way than by agreement unless the local authority contemplates that compensation will be paid. It is better to purchase where it is important to keep the space open and agreement is not obtained. [195]

Roads, Streets and Restriction of Ribbon Development.—Questions relating to the planning of roads, the control of access to highways, and the restriction of development on frontages of highways are dealt with in overlapping provisions in the Town and Country Planning Act, 1932, and the Restriction of Ribbon Development Act, 1935 (*t*). Their dual administration by Government departments is paralleled by overlapping administration of planning and highway committees. Whether to use a planning scheme to reserve widths of new roads or widen existing roads, or to apply standard widths under the Restriction of Ribbon Development Act will depend on local circumstances and perhaps on special requirements of the Ministries of Health and Transport. Similarly, special circumstances may dictate whether the access to highways will be controlled by a scheme or by the Restriction of Ribbon Development Act. The position is too confused to permit of any rule for general adoption. [196]

Matters of detail connected with distinctions between Part I. and

(*g*) S. 35 ; 25 Halsbury's Statutes 506. See title GARDEN CITIES.

(*r*) S. 41 ; *Ibid.*, 511.

(*s*) 25 Halsbury's Statutes 489. See title TOWN PLANNING SCHEMES—"General Development Order."

(*ss*) See note (*p*) p. 119, *ante*.

(*t*) 28 Halsbury's Statutes 79 *et seq.* and 275 *et seq.* See title RIBBON DEVELOPMENT, RESTRICTION OF.

Part II. reservations for roads and streets; building lines; diversion of highways; prevention of obstructions at corners, etc., are referred to under their appropriate titles.

It is important for authorities to utilise, where properly applicable, the powers under the P.H.A., 1925, with regard to the declaration of existing highways as new streets (*u*). [197]

Public Advertising and Petroleum Filling Stations (*a*).—The control of public advertising and petroleum filling stations are other matters regarding which there are dual powers. The model clauses of the M. of H. provide (clause 75) that the operation of any bye-laws that are similar to, or inconsistent with, the provisions of the scheme is suspended. Although subject to some qualification (*b*), this requirement means that the authority has to make a choice of alternatives. Each authority will have to judge for itself the question of whether it is best to control advertisements under a scheme or by means of bye-laws under other Acts (*c*). The advantages of proceeding under a scheme are greatest in urban areas, but in some urban areas bye-laws have proved comparatively effective (*d*). [198]

In regard to petroleum filling stations, it is desirable to adopt bye-laws for certain purposes and deal with other purposes in the scheme, in order to obtain adequate control over the appearance of stations. In a scheme that has been approved by the M. of H. for the borough of Romney and the rural district of Romney Marsh, the most effective procedure has been adopted. Clause 45 of the scheme dealing with the external appearance of buildings exempts petroleum filling stations from control over appearance and this makes it practicable to provide in clause 74 that the bye-laws in force under the Petroleum (Consolidation) Act, 1928 (*e*), are exempt from suspension. The effect is to secure control of appearance and advertising by means of bye-laws under the 1928 Act without impairing powers under the planning scheme to deal with other matters. [199]

Temporary Structures and Moveable Dwellings.—Tents, vans, sheds, and similar structures used for human habitation (not others) may be controlled under sect. 268 of the P.H.A., 1936 (*f*), re-enacting earlier legislation. Moveable dwellings may be regulated under sect. 269 of the same Act (*g*). The purpose of these sections is not that of the Town and Country Planning Act, 1932, but the use of land for camping purposes is subject to some control by planning authorities in connection with their zoning proposals—a further example of overlapping legislation. Temporary structures, irrespective of their being used for human habitation, may present a problem, and may even be so numerous, and so objectionable in type, as to be an obstacle to the realisation of the objects of the Town and Country Planning Act. This is partly due to the long period which frequently elapses before a scheme becomes operative (*h*). [200]

(*u*) S. 30; 13 Halsbury's Statutes 1126.

(*a*) See titles ADVERTISEMENTS; TOWN PLANNING SCHEMES.

(*b*) See note of M. of H. on p. 42 of Model Clauses (1939 ed.), *re* Petroleum Filling Stations.

(*c*) Advertisements Regulation Act, 1907, and Advertisements Regulation Act, 1925; 13 Halsbury's Statutes 908, 1113.

(*d*) See *Twickenham Corp'n. v. Solosigns, Ltd.*, [1939] 3 All E. R. 246; Digest (Supp.).

(*e*) 13 Halsbury's Statutes 1170.

(*f*) 29 Halsbury's Statutes 492. See notes thereon in Lumley's P.H. (11th ed.), pp. 532 *et seq.*

(*g*) 29 Halsbury's Statutes 494. This is a new provision, on which also Lumley's notes should be consulted (11th ed.), pp. 537 *et seq.*

(*h*) Cf. p. 117, *ante*.

National Housing and Town Planning Council.—This Council was founded as the National Housing Reform Council in 1900 with the object of securing by all possible means the abolition of unhealthy housing conditions and the efficient planning of town and country. Since that date the Council has increasingly urged the Government and the local authorities to adopt a definite and continuous policy to this end. Numerous regional and national conferences and meetings have been held each year and quantities of literature circulated, while the Council's representatives have been active in Parliament and the Press.

Since the passage into law of the Town and Country Planning Act of 1932, planning administrators have generally held the view that local authorities have now very adequate statutory powers for the control of any development in their areas. The Council's campaign has therefore been mainly directed towards stimulating the authorities to use these powers wisely and vigorously. In recent years the total area in England and Wales under planning control has greatly increased and is now in the neighbourhood of 27 million acres.

The outbreak of war has unfortunately retarded both housing and planning progress throughout the country. There is little doubt, however, that both these problems will require to be attacked with new determination as soon as hostilities cease.

Conclusion.—Notwithstanding the difficulties involved in preparing town planning schemes within a reasonable period of time and the possible ineffectiveness of much of the control that is being attempted in schemes, it may be claimed that, with the one exception of land and buildings used for agricultural purposes, there is no limit to what may legally be done by means of a scheme to control the development of land or buildings. This statement, however, is only true if the authority responsible for the scheme is prepared to pay compensation, whenever due, in accordance with the requirements of the Act. On the other hand, schemes can be prepared in such a way as to avoid matters giving rise to claims for compensation. For example, much can be done by skilful planning and co-operation to limit densities and uses of buildings, to control uses of land, to preserve and protect buildings of historic interest, and to secure good sanitary conditions and convenience, without having to face liabilities for compensation.

Finally, although town planning legislation has been on the statute book for thirty years, it still lacks effectiveness in preventing undesirable forms of development and may still be said to be experimental. It seems as if effective planning will not be realised until: (1) there is further co-ordination of the law on the subject; (2) there is appreciation of the weakness of the present policy of excessive reliance on interim development control; and (3) a scheme of national planning is formulated as a basis for regional and local planning. Some students of the subject would add: until the judicial function and the guiding and administrative functions now united in the Minister of Health are severed by the transfer of one function or the other to some different body or tribunal. This is, however, a controversial matter, allied to the general question of the exercise (*e.g.* under the P.H.A. and the Housing Acts) of these functions by Ministers of the Crown (*i*).

In one respect town planning is exceptionally well served. The M. of H. assists planning authorities at every stage in preparing and carrying out schemes, and every local authority has access to the officials of the M. of H. for guidance in all matters of administration. [201]

London.—The legal provisions relating to this title apply to London equally as elsewhere. [202]

TOWN PLANNING AGREEMENTS WITH OWNERS

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See also title : TOWN AND COUNTRY PLANNING and titles there listed.

Introduction.—*Sect. 34 of the Town and Country Planning Act, 1932 (a). Power of Authorities and Owners to Enter into Agreements Restricting the Use of Land.*—The section provides as follows: “(1) Where any person is willing to agree with any such authority as is mentioned in sub-sect. (2) of this section that his land, or any part thereof, shall, so far as his interest in the land enables him to bind it, be made subject, either permanently or for a specified period, to conditions restricting the planning, development or use thereof in any manner in which those matters might be dealt with by or under a scheme (b), the authority may, if they think fit, enter into an agreement with him to that effect, and shall have power to enforce the agreement against persons deriving title under him in the like manner and to the like extent as if the authority were possessed of, or interested in, adjacent land (c), and as if the agreement had been entered into for the benefit of that adjacent land. [203]

(2) Agreements may be entered into under this section by a local authority (d), a county council or a responsible authority (e), not being a local authority or a county council.” [204]

(a) 25 Halsbury's Statutes 506.

(b) Briefly, all matters that may be dealt with under a scheme are suitable subjects for inclusion in an agreement under s. 34. See, generally, s. 1 of the Act; 25 Halsbury's Statutes 472, and, for particular matters, ss. 11, 12, 46, 47; *ibid.*, 484, 485, 512, 513, and the “matters to be dealt with by schemes,” which are set out in Sched. II.; 25 Halsbury's Statutes 528. In relation to s. 1, see also the amendment made by s. 70, Civil Defence Act, 1939; 32 Halsbury's Statutes 878.

(c) That is, the authority may enforce the agreement as a restrictive covenant running with the land: see Law of Property Act, 1925, s. 141; 15 Halsbury's Statutes 321.

(d) Subject to the provisions of Town and Country Planning Act, 1932, s. 2; 25 Halsbury's Statutes 472, local authorities for the purpose of this Act are, as respects the City of London, the Common Council, as respects the County of London, the L.C.C., and elsewhere, the councils of county boroughs and county districts.

(e) The authority the scheme may specify, that is, the local authority within whose district any land to which the scheme applies or any neighbouring land is

Sect. 34 of the Act of 1932 (f) is in a sense outside the ambit of town and country planning, having been inserted in that Act in default of any other convenient vehicle for legislation. The power was designed largely in order to get over the difficulty that certain covenants restricting the use of land did not, or might not, run with the land, and therefore did not affect its value for purposes of death duties. It was thought that land owners would, if this difficulty was removed, be more likely to enter into covenants restricting the use of land. Agreements under the section also enable the local authority which enters into them to obtain some control, additional to that given by the "interim development" machinery, before a scheme comes into operation, and occasionally to make some special bargain which would be inappropriate for inclusion in the scheme itself—although reference to the section will show that it does not support agreement for anything which could not be secured in or under a scheme. It will be seen that the agreements which the section validates can be made with authorities who do not ultimately become the responsible authorities for town and country planning, and it will be realised that it is not those agreements alone, which are made under the section, which are of importance in planning. While it is only by agreement that private open spaces, agricultural reservations and other large tracts of land may be reserved without involving the responsible authority in a claim for compensation, agreements for such purposes may be, and commonly are, made as part of the general bargaining process which precedes the approval of a scheme, and could equally have been made if sect. 34 had not been passed. It is to be borne in mind that when the Minister approves a resolution to prepare a scheme, he has in giving that approval considered the relative merits of a separate agreement for the land; of an owner's scheme; and of planning by means of a scheme made by the local authority. It will be appreciated therefore that, when once approval has been given, formal agreements under sect. 34 should be out of place, except so far as they may deal with the position while a planning scheme is being made.

The importance of sect. 34, in relation to planning, can therefore be overrated. [205]

Agreements in Advance of the Scheme.—Agreements may be made before the scheme has come into operation; though not (obviously) with the "responsible authority" as such. If made in perpetuity, or for a term extending beyond the coming into operation of the scheme, they can, unless abrogated by it, operate side by side with the scheme (the land to which they relate being in this case left blank on the planning map), while in some few cases an agreement made in advance of the scheme has been scheduled to the scheme.

The relevant model clause for use in schemes (g) distinguishes

situate, or a county council or a joint executive body specially constituted by the scheme. Two or more authorities may be specified for different purposes, or different parts of the scheme, see Town and Country Planning Act, 1932, s. 11 (2); 25 Halsbury's Statutes 484.

(f) 25 Halsbury's Statutes 506.

(g) M. of H., Town and Country Planning Model Clauses for use in the Preparation of Schemes, June, 1939. Part VIII., Miscellaneous, p. 93.

64 (1) The council may enter into agreements consistent with the provisions of this scheme in relation to any matters with which a scheme may deal.

(2) The several agreements of which particulars are set out in the Fifth Schedule to this scheme, shall, except in so far as they are made under powers conferred by

between agreements made under the scheme and agreements made under sect. 34. The view of the Minister of Health has been impressed upon planning authorities, as being that the scheme itself should contain the operative provisions. These should, certainly, be determined as far as possible by agreement, but should not be incorporated in an agreement as a document separate from the scheme. [206]

The Town and Country Planning Act is silent as to death duties. For the purpose of death duties, however, the value of land passing upon the death of a deceased person on which duty is chargeable is the price which the land would fetch if sold in the open market at the time of the death of the deceased. Where land so passing upon a death is the subject of restrictions imposed by a town planning scheme which has received final approval and become effective, and ownership of the land does not carry with it the right to receive compensation in respect of injurious affection by reasons of such restrictions, the value of the land for purposes of death duties would, being based on the market value at the time of the death, necessarily be determined having regard to such restrictions.

It appears, therefore, that where an agreement under sect. 34 has been made with the planning authority, the same principles would apply.

Such an agreement should be in perpetuity, otherwise it may be claimed that the land possesses a deferred building value. [207]

Expenses of Agreements.—The Acts are silent on this subject. It appears to have been assumed that the advantages of entering into agreements would be so obvious to landowners that they would readily incur the expense of obtaining expert advice. In practice this has been found not to be so. In the case of large estates, particularly bordering on popular centres, heavy expense may be incurred by landowners. The planning authority may be willing to supply draft agreements and plans; the checking of areas and boundaries, correspondence with owners, and negotiations with mortgagees and other interested parties must, however, involve expense. There seems to be no reason why the planning authority should not, particularly in important cases, include in any agreement an undertaking to make some contribution towards expenses incurred by owners. [208]

Preparation of Rough Draft Scheme.—It is usual in the first instance to prepare a rough draft scheme covering the whole of the planning area to a scale of 6 inches to the mile, showing land it is proposed to reserve for public open spaces, private open spaces, agricultural reservations, etc., according to the particular area of the scheme. Floodlands on which building is permanently restricted and areas ready for immediate residential development and those to be placed under sects. 15 and 16 awaiting release under a general development order (h) should be

s. 34 of the Act, be deemed to have been made by the council under the powers conferred on them by this clause, and a provision contained in any of the said agreements shall prevail, notwithstanding that it is inconsistent with the provisions of this scheme.

Thus an owner is protected by his agreement.

(h) Town and Country Planning Act, 1932, s. 15 (1). The responsible authority may by an order (in this Act referred to as a "general development order") permit building operations to proceed, subject to such conditions as may be specified in

shown. Reasonable development around existing villages, as well as general business and industrial areas, should be incorporated and investigation made as to mineral wealth, existing and proposed water supplies, gas, electricity and other services. Proposed new roads should be surveyed in conjunction with local surveyors and reservations for any special sites (e.g. aerodromes) made. In fact, the town planning officer should have clearly in his mind what he considers to be the ideal scheme for the district. An ownership map as complete as possible is essential at this juncture. [210]

Individual Estates.—From the rough draft and the ownership maps, 6-inch scale maps of individual estates may be made and negotiations with owners opened.

This is probably the most difficult part of the whole procedure and great tact and skilful handling is required. The landowner and his advisers may naturally feel that his rights as owner are being interfered with, and the difficulty is to convince him that it is to his advantage to enter into an agreement with the planning authority. His argument that he is the owner of the land and that there is no reason why the authority should interfere is to be respected. The advantages of coming to an agreement should therefore be stressed. It may be pointed out that failing an agreement the authority would have to zone the land as they think fit, and the landowner would then have to object at the appropriate time which would mean a period of trouble and expense, and be by no means so satisfactory as reaching an agreement in the early stages. Effect can by agreement be given within limits to the landowner's own ideas as to the future reservation or development of his estate, and the scheme will thus not represent merely the views of the town planning authority.

Experience again proves that when such an approach has been made it is nearly always possible to come to agreement over details of the necessary maps. The draft clauses of an agreement sometimes prove difficult since solicitors and landagents acting on behalf of owners have varying views as to ground which should be covered. A closer study of the provision and objects of the Act by solicitors and landagents acting on behalf of landowners would greatly facilitate negotiations, and so lead to agreed schemes. [211]

the order, on any land as respects which the provisions of a scheme prohibit or restrict building operations pending the coming into operation of a general development order.

A general development order may be made with respect to the whole, or some part only, of the land which is subject to the prohibitions or restrictions, and orders may be made from time to time so long as any part of that land remains so subject. A general development order shall require the approval of the Minister, and the Minister may approve any such order (with or without modification).

The section then states that the release of such land shall be considered every three years; and that one general development order may be revoked or varied by a subsequent general development order.

Town and Country Planning Act, 1932, s. 16 (1). Where the provisions of a scheme prohibit or restrict building operations on any land pending the coming into operation of a general development order, a person, who before such an order comes into operation with respect to that land, desire to commence thereon any building operations which would contravene any such temporary prohibition or restriction may, in accordance with such directions, if any, as may be contained in the scheme, apply to the responsible authority for their consent to the carrying out of the operations specified in the application.

The section then gives the conditions under which the responsible authority may refuse permission.

Specimen Agreements

AN AGREEMENT (i) made the day of , 19 ,
BETWEEN THE COUNCIL of (k) (who with their
successors are in this agreement called "the Council") and
of in this agreement called "the owner" which expression
shall for the purposes of this agreement be deemed to include the
owner's successors administrators and assigns the estate owners for the
time being of the property the subject of this agreement of the other
part;

WHEREAS the Council have in pursuance of sect. 6 of the Town and
Country Planning Act, 1932 (l) (hereinafter called "the Act"), passed
a resolution to prepare a planning scheme (hereinafter called "the
Scheme" which expression shall be deemed to include the Scheme in
such form and with such amendments alterations and additions thereto
as may be finally approved by the Minister of Health) for an area which
includes the property described in the First Schedule to this agreement
and the said resolution has been approved by the Minister of Health;

AND WHEREAS it is contemplated that the Council will be the Re-
sponsible Authority (m) for the purposes of the Scheme for the district
within which the said property is situate; AND WHEREAS by sect 34 of
the Act (n) it is provided that where any person is willing to agree with
any such authority as is mentioned in sub-sect. (2) of that section that his
land or any part thereof shall so far as his interest in the land enables him
to bind it be made subject either permanently or for a specified period to
conditions restricting the planning development or use in any manner in
which those matters might be dealt with by or under a scheme (o) the
authority may if they think fit enter into an agreement with him to that
effect and shall have power to enforce the agreement against persons
deriving title under him in the like manner and to the like extent as if
the authority were possessed of or interested in adjacent land and as if the
agreement had been entered into for the benefit of that adjacent land (o);

AND WHEREAS the Council are an authority within the meaning of
the said sect. 34 and subject to its being provided in the Scheme that
they shall be the Responsible Authority (m) thereunder have agreed
with the owner as is hereinafter provided;

(i) The limitations in clause 2 of the testatum should be noticed. It is some-
times sought to frame an agreement which will be effective even after the scheme
becomes operative. The scheme will, however, necessarily prevail (in the event of
inconsistency) except to the extent that an agreement is expressly saved, and an
agreement made by the scheme making authority will not bind the responsible
authority (see (m), *infra*) if the two are not the same. See *ante*, pp. 123—125, as to
the distinction between agreements which depend on s. 34; agreements which pre-
cede and pave the way for a scheme and are then spent; and agreements which take
effect by virtue of the scheme.

(k) Insert the Town (or County or District) Council of , as the case
may be.

(l) 25 Halsbury's Statutes 475.

(m) See s. 11; *ibid.*, 484. Unless the scheme making authority become the
responsible authority under the scheme, it is arguable how far the agreement will
be enforceable by or against the latter authority: *Dyson v. Forster*, [1909] A. C.
98; 34 Digest 686, 799; *Grant v. Edmondson*, [1931] 1 Ch. 1; Digest (Supp.). Hence
one reason for allowing the scheme to supersede the agreement.

(n) 25 Halsbury's Statutes 506.

(o) Note the two limiting factors. The maximum content of an agreement
which is to be enforced under s. 34 is that which would be *intra vires* a scheme (which
may be wider than what the Minister would approve in a scheme). Even so, the
extent of its enforceability is no greater than that of an agreement under the ordinary

NOW THIS INDENTURE WITNESSETH as follows :—

1. The owner hereby agrees with the Council that the property described in the First Schedule hereto shall be subject to the conditions restricting the planning development and use thereof contained in the Second Schedule hereto until such time as the Scheme shall come into operation (p).

2. The Council hereby agree with the owner that they will use their best endeavours (q) to secure that a provision will be inserted in the Scheme providing that the said property shall be subject to the conditions restricting the planning development and use thereof contained in the Second Schedule hereto.

3. This Agreement shall not be deemed to prevent or restrict the erection or use of buildings necessary for the proper enjoyment of the said property for any of the purposes authorised in the Second Schedule hereto provided that the provisions contained in the Scheme relating to the external appearance of buildings shall apply to such buildings except in so far as they are buildings of the kind specified in sub-sect. (3) of sect. 12 of the Act (r).

4. The owner shall not on or after the coming into operation of the Scheme make any claim for or recover any compensation under the Act either in respect of the property the subject of this agreement or in respect of other adjoining property vested in the owner on the ground that property vested in him has been injuriously affected by any provision contained in the Scheme restricting the planning development and use of the property in the manner referred to in this agreement (s).

5. The Council shall not on or after the coming into operation of the Scheme make any claim on the owner for the recovery of betterment under the Act on the ground that the property the subject of this agreement or other adjoining property vested in the owner has been increased in value as a result of any provisions contained in the Scheme restricting the planning development and use of the property in the manner referred to in this Agreement (t).

IN WITNESS etc.

THE FIRST SCHEDULE hereinbefore referred to

ALL THOSE pieces or parcels of land situate in the Parishes of _____ and _____ in the County of _____ and comprising an area of _____ acres or thereabouts which said pieces or parcels of land are more particularly described hereunder and are delineated and coloured green on the plan annexed hereto.

<i>Parish.</i>	<i>Ordinance Enclosure Number.</i>	<i>Area.</i>
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law : see title RESTRICTIVE COVENANTS in Halsbury's Laws of England, 2nd ed.. Vol. XIII., pp. 625 *et seq.*

(p) See s. 8 (2) ; 25 Halsbury's Statutes 480.

(q) See note (i), *supra*. The council by whom the agreement is made cannot ensure that the contents of the agreement will be regarded by the Minister (whose approval is necessary to the coming into operation of the scheme) as apt for reproduction therein.

(r) 25 Halsbury's Statutes 480.

(s) For compensation, see ss. 18 *et seq.* ; 25 Halsbury's Statutes 492.

(t) For betterment, see s. 21, *ibid.*, 497.

THE SECOND SCHEDULE hereinbefore referred to

The property the subject of this agreement shall be used (u) only as a private open space, that is to say

- (a) as a private ground for sports, play, rest or recreation or as an ornamental garden or pleasure ground, or
- (b) as arable, meadow or pasture land, osier land, orchards or nursery grounds, or as a plantation, or wood or for the growth of saleable underwood and shall not be used in such a manner as to impair the natural aspect of the land already wooded or as a sports or recreation ground ordinarily open or intended to be ordinarily open to the public on payment of a charge or market gardens, allotments or land used wholly or principally for the purpose of cultivation under glass. [211A]

AN AGREEMENT (a) made the day of , 19 ,
BETWEEN THE COUNCIL OF (b) who with their
successors are in this agreement called "the Council" and of
 in this agreement called "the owner" which expression
shall for the purposes of this agreement be deemed to include the owner's
successors administrators and assigns the estate owners for the time
being of the property the subject of this agreement of the other
part;

WHEREAS the Council have in pursuance of sect. 6 of the Town and Country Planning Act, 1932 (c) (hereinafter called "the Act"), for the purpose of preparing and adopting a scheme concurred with other local authorities and the County Council of (b) in the appointment of a joint committee known as the Joint Planning Committee to which Committee the Council have delegated their powers under the Act, and the said Committee have adopted (b) a draft planning Scheme (hereinafter called "the Scheme" which expression shall be deemed to include the Scheme in such form and with such amendments alterations and additions thereto as may be finally approved by the Minister of Health) for an area which includes the property described in the First Schedule to this agreement;

AND WHEREAS it is contemplated that the Council will be the Responsible Authority (d) for the purposes of the Scheme for the district within which the property is situate;

AND WHEREAS by sect. 34 of the Act (e) it is provided that where any person is willing to agree with any such authority as is mentioned in subsect. (2) of that section that his land or any part thereof shall so far as his

(u) This is one illustration of the kind of thing which may be suitably agreed. Some councils have procured the agreement of landowners to more elaborate restrictions, but see note (o), *supra*. It has to be remembered that obligations to be enforceable as under the ordinary law must be negative in effect: *Tulk v. Moxhay* (1848), 2 Ph. 774; 40 Digest 313, 2667; *Clegg v. Hands* (1890), 44 Ch. D. 503; 31 Digest 109, 2448.

(a) This agreement is appropriate where the local authority making the agreement is a constituent of a joint committee which will make the planning scheme, instead of being itself the scheme making authority.

(b) Complete or adapt according to circumstances.

(c) 25 Halsbury's Statutes 475.

(d) See note (m) on the other form of agreement, *ante*, p. 127.

(e) 25 Halsbury's Statutes 506.

interest in the land enables him to bind it be made subject either permanently or for a specified period to conditions restricting the planning development or use thereof in any manner in which those matters might be dealt with by or under a scheme (f) the authority may if they think fit enter into an agreement with him to that effect and shall have power to enforce the agreement against persons deriving title under him in the like manner and to the like extent as if the authority were possessed of or interested in adjacent land and as if the agreement had been entered into for the benefit of that adjacent land (f);

AND WHEREAS the Council are an authority within the meaning of the said sect. 84 and subject to its being provided in the Scheme that they shall be the Responsible Authority (g) thereunder have agreed with the owner as is hereinafter provided;

NOW THIS INDENTURE WITNESSETH as follows :—

1. The owner hereby agrees with the Council that the property described in the First Schedule hereto shall be subject to the conditions restricting the planning development and use thereof contained in the Second Schedule hereto until such time as the Scheme shall come into operation (h).

2. The Council hereby agree with the owner that they will use their best endeavours (i) to secure that a provision will be inserted in the Scheme providing that the said property shall be subject to the conditions restricting the planning development and use thereof contained in the Second Schedule hereto.

3. This Agreement shall not be deemed to prevent or restrict the erection or use of buildings necessary for the proper enjoyment of the said property for any of the purposes authorised in the Second Schedule hereto provided that the provisions contained in the Scheme relating to the external appearance of buildings shall apply to such buildings except in so far as they are buildings of the kind specified in sub-sect. (3) of sect. 12 of the Act (j).

4. The owner shall not on or after the coming into operation of the Scheme make any claim for or recover any compensation under the Act either in respect of the property the subject of this Agreement or in respect of other adjoining property vested in the owner on the ground that property vested in him has been injuriously affected by any provision contained in the Scheme restricting the planning development and use of the property in the manner referred to in this agreement (k).

5. The Council shall not on or after the coming into operation of the Scheme make any claim on the owner for the recovery of betterment under the Act on the ground that the property the subject of this Agreement or other adjoining property vested in the owner has been increased in value as a result of any provisions contained in the Scheme restricting the planning development and use of the property in the manner referred to in this agreement (l).

IN WITNESS etc.

(f) See notes (i) and (o) on the other form of agreement, *ante*, p. 127.

(g) See note (m) on the other form of agreement, *ante*, p. 127.

(h) See s. 8 (2); 25 Halsbury's Statutes 480.

(i) See note (q) on the other form of agreement, *ante*, p. 128.

(j) 25 Halsbury's Statutes 486.

(k) See note (s) on the other form of agreement, *ante*, p. 128.

(l) See note (t) on the other form of agreement, *ante*, p. 128.

THE FIRST SCHEDULE hereinbefore referred to

ALL THOSE pieces or parcels of land situate in the Parishes of _____ and _____ in the County of _____ and comprising an area of _____ acres or thereabouts which said pieces or parcels of land are more particularly described hereunder and are delineated and coloured green on the plan annexed hereto.

*Parish.**Ordinance Enclosure Number.**Area.**THE SECOND SCHEDULE hereinbefore referred to*

The property the subject of this agreement shall be used (m) only as a private open space, that is to say

- (a) as a private ground for sports, play, rest or recreation or as an ornamental garden or pleasure ground, or
- (b) as arable, meadow or pasture land, osier land, orchards or nursery grounds, or as a plantation or wood or for the growth of saleable underwood and in such a manner as to impair the natural aspect of the land already wooded or shall not be used as a sports or recreation ground ordinarily open or intended to be ordinarily open to the public on payment of a charge or market gardens, allotments or land used wholly or principally for the purpose of cultivation under glass. [212]

The Effects of Agreements on Compensation and Betterment, etc.—

The question of compensation or betterment does not arise under an agreement pursuant to sect. 34, Town and Country Planning Act, 1932. Therefore, apart from other purposes which it may serve, an agreement under sect. 34 has the advantage of avoiding the payment of compensation, or the claiming of betterment by the responsible authority. The same is true of planning by agreement; moreover, a scheme which goes before the M. of H. and receives the Minister's approval as an agreed measure, is assured of success in operation. [213]

London.—The legal provisions relating to this title apply to London equally as elsewhere. [214]

(m) See note (u), on the other form of agreement, *ante*, p. 129.

TOWN PLANNING AUTHORITIES

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See also title : TOWN AND COUNTRY PLANNING and titles there listed.

The local authorities concerned with town and country planning are of three kinds : (1) authorities for preparing or adopting planning schemes ("planning authorities" in the narrower and more usual sense), (2) interim development authorities, and (3) authorities for enforcing and carrying into effect the provisions of schemes when made. Their powers and duties are contained in the provisions of the Town and Country Planning Act, 1932 (*a*).

Authorities for the Preparation or Adoption of Planning Schemes (*b*).

(i.) *Local Authorities.* (a) Directly Empowered.—The power to prepare or adopt planning schemes is primarily vested in local authorities which, for the purposes of the Act, are (*c*) :

for the City of London : the Common Council of the City ;

for the County of London : the L.C.C. ;

elsewhere in England and Wales : the borough, urban district and rural district councils.

Any local authority (as defined, *supra*) may prepare a planning scheme or adopt a planning scheme proposed by landowners in respect of any land within, or in the neighbourhood of, its own district (*d*), or may combine with other local authorities (including the county council) to prepare a joint town planning scheme (*e*), and in certain

(*a*) 25 Halsbury's Statutes 470.

(*b*) See title TOWN PLANNING SCHEMES.

(*c*) S. 2 (1).

(*d*) S. 6 (1) (*a*).

(*e*) See para. (iii), p. 133, *post*.

other circumstances it may be required, by the M. of H., to take such action (f). The Act also provides (g) for the constitution, with or even without assent of the local authority concerned, of joint committees.

(b) *Relinquishment of Powers.*—The council of any county district (*i.e.* non-county borough, urban district or rural district) may at any time, by agreement, relinquish any of its powers or duties under the Act to the council of the county in which its district is situate, upon such terms and conditions as may be specified in the agreement (h). Where such an agreement is made, or is varied or rescinded, a copy of the document must be sent by the county council to the M. of H.

Circumstances which may make it desirable for the council of a county district to relinquish its town planning powers to a county council are, for example, where the resources of a rural district are insufficient to defray the cost entailed in the preparation or enforcement of a scheme, or where the preservation of large tracts of open space can best be accomplished by means of a county planning scheme.

The conditions applying to any particular case will determine the extent of the powers which it is expedient to relinquish. If a local authority is unable or unwilling to take the responsibility either of preparing or of enforcing a scheme it can, with the assent of the county council, relinquish to the latter all its town planning powers; on the other hand, it may desire itself to administer the scheme and in that case will only relinquish the power to prepare it. In either case, however, the scheme itself will determine the "responsible authority" for enforcing it, and it is in virtue of the scheme, and not of the prior relinquishment, that an authority other than the authority which prepared the scheme will become the authority for its enforcement. A third method, very frequently adopted in practice, is for the local authority to prepare the scheme and to administer the bulk of its provisions, making the county council the responsible authority only for some specific provisions such as those relating to county roads and building lines thereon. Similarly, a local authority may be prepared to relinquish its powers in respect of a portion of its area while retaining them for the remainder. [215]

(ii.) *County Councils.*—County councils (except the L.C.C.) are not themselves town planning authorities unless powers are relinquished to them by the council of a county district (i) or are conferred on them by the M. of H. in default of action by a local authority (k), but they have the right to participate in joint committees (l). They may also be made responsible authorities for the enforcement of particular provisions in town planning schemes (m). [216]

(iii.) *Joint Committees.* (a) *Voluntary Combinations.*—The preparation by a single local authority of a town planning scheme confined to the land within its own boundaries is by no means always the best course to adopt. Where neighbouring districts have common interests (n) or where they form one economic unit (o), there are many

(f) S. 36.

(g) S. 4.

(h) S. 2 (2).

(i) S. 2 (2); see para. (i.), p. 132, *ante*.

(k) S. 36 (2), (4); see para. (iv.), p. 135, *post*.

(l) Ss. 3, 4, 5; see para. (iii.), *infra*.

(m) S. 11 (2) (a); see para. (iii.), *infra*, and "Authorities responsible for the Enforcement of Planning Schemes," p. 136, *post*.

(n) *E.g.* in matters of water supply or drainage; transport facilities; rural preservation and green belts.

(o) *E.g.* as in the case of widespread industrial or mining areas.

advantages in combined action, by the local authorities concerned, to produce a single comprehensive scheme (*p*) giving effect to a common policy with regard to matters of regional importance.

Recognising the desirability of regional planning of this nature, which has become increasingly manifest during recent years, the Act provides (*q*) that two or more local authorities (including county councils) may concur in appointing a joint committee for the purpose of preparing or adopting a planning scheme for land within or in the neighbourhood of the districts of the constituent authorities and may delegate to the joint committee any powers, other than the power to borrow money or levy a rate, which any of the constituent authorities might exercise for this purpose. [217]

Every appointed member of a joint committee must be a member of one of the constituent authorities, but the same person may represent two or more authorities (*r*). He may be appointed for so long as he remains a member of one of the authorities or for a shorter term, *e.g.* from year to year (*s*). With the consent of a majority of the constituent authorities, a joint committee may co-opt additional members (whether members of a constituent authority or not), but three-fourths of the membership of a joint committee must consist of "appointed members," that is, members appointed as representatives of constituent authorities (*t*). Practice with regard to the co-option of members varies a good deal in regard to the nature of the interests to be represented, especially as the number is severely limited; normally a choice is made of persons representing such bodies as the county council (when not a constituent authority), joint committees of adjoining regions, local civic societies, rural preservation societies and similar organisations, chambers of commerce and landowners. [218]

A joint committee may appoint sub-committees, consisting wholly or partly of members of the joint committee, but three-fourths of the membership of a sub-committee must be "appointed members" of the joint committee (*u*). Sub-committees can thus be appointed to consider and advise the joint committee on special subjects such as proposals with regard to roads, open spaces or allotments. In practice, however, a technical committee, consisting of the clerks, surveyors and town planning consultants or officers of the constituent authorities, is usually appointed to advise the joint committee on these and similar matters.

The expenses of a joint committee are defrayed by the constituent authorities in such proportions as they may agree or, failing agreement, as may be determined by the M. of H. (*a*). One practice has been for the total expense to be defrayed by the constituent local authorities in the proportion that their rateable values bear to the aggregate rateable value, contributions on this basis being levied periodically by precept of the joint committee. Where a county council is a constituent, it has frequently agreed to pay half, and in some cases all, of the expense. The accounts of the joint committee are subject to government audit, except where *none* of the constituent authorities is under government audit (*b*). [219]

(*p*) See title REGIONAL PLANNING

(*q*) S. 3 (1).

(*s*) S. 3 (3).

(*u*) S. 3 (5).

(*b*) S. 3 (7).

(*r*) S. 3 (2).

(*t*) S. 3 (4).

(*a*) S. 3 (6).

(b) *Compulsory Combinations.*—The M. of H. may by order constitute a joint committee of two or more authorities (including county councils), at the request of one or more of them and may transfer to the joint committee any powers (other than the power to borrow money or levy a rate) which any of the constituent authorities might exercise for the purpose. Unless all the authorities affected assent to the constitution of the joint committee the Minister, before making the order, must hold a local inquiry. The order may dissolve any existing joint committee if that course appears to the Minister to be necessary (c).

[220]

(c) *Right of County Councils and Local Authorities to become Members of a Joint Committee.*—A county council has the right to become a member of any joint committee of which the council of any county district in the county is a constituent authority and (if the M. of H. approves) any local authority whose district adjoins that of any constituent authority of a joint committee has the right to become a member of the committee. In the case either of a county council or of a local authority, the terms of membership in respect both of the number of representatives to be appointed and the powers to be delegated are settled by agreement with the joint committee or, failing agreement, are determined by the Minister. If the Minister considers that any such county council or local authority, who have not claimed to be represented on the joint committee, ought to be so represented, he may, by order, make them members of, and transfer their powers to, the joint committee. A county council or a local authority who voluntarily or by order of the Minister becomes a member of a joint committee is deemed to be a constituent authority but the consequential alteration in the constitution of the committee does not affect either its identity or the validity of its previous actions (d). [221]

(iv.) *Authorities by Default.*—If the Minister is satisfied after local inquiry that an authority (e) ought to prepare a town planning scheme, he may by order require them to do so; and the order has the same effect as though it were a resolution to prepare a scheme passed by the authority and approved by the Minister (f). [222]

If an authority has failed to adopt a scheme proposed by landowners (g) which the Minister considers ought to be adopted, he may by order, after local inquiry, require the authority to adopt the scheme or he may approve the scheme with or without modifications (h). [223]

If the authority fail to prepare a scheme within the time specified in the order or to take the requisite steps under the Act or the regulations (i), the Minister may himself act in the place and at the expense of the authority or, if the authority be an U.D.C. with a population (at the last census) of less than 20,000, or a R.D.C., he may empower the county council to act (k). [224]

(c) S. 4.

(d) S. 5.

(e) *I.e.* a local authority as defined in the Act; a county council to whom powers have been relinquished or a joint committee.

(f) S. 36 (1).

(g) An authority may (s. 6 (1) (b)), instead of itself preparing a scheme, adopt, with or without modifications, a scheme proposed by all or any of the owners of land within or in the neighbourhood of its district. It is not a course normally adopted.

(h) S. 36 (3).

(i) Regulations made by the Minister under the Act; S.R. & O., 1933, No. 742.

(k) S. 36 (2).

Any expenses incurred by the Minister in exercising the town planning powers of an authority are recoverable from the authority who, with the sanction of the Minister, may borrow money for the purpose (l). [225]

Interim Development Authorities.—During the preparation of a scheme (*i.e.* the interim period between the date on which the resolution to prepare a scheme takes effect and the date on which the scheme comes into operation), control of all development (*m*), in the area to which the resolution applies, is vested by the general interim development order (*n*) in an interim development authority. In the normal course the local authority who passed the resolution to prepare the scheme is the interim development authority but, where an area (subject to a resolution to prepare a scheme) is transferred from one local authority to another, the local authority to which the area has been transferred becomes the interim development authority (*o*). The exceptions are (i.) where a special interim development order (*p*) was, immediately prior to the general order, in force in an area, in which case the authority under the special order will remain the interim development authority; and (ii.) where the resolution to prepare the scheme was passed by a county council or a joint committee, in which case (in the absence of a special order) the interim development authority in respect of the area of each county district included in the resolution, is the council of that district. Special provision is made with regard to the administrative County of London: in the City, the Common Council of the City and elsewhere the L.C.C. is the interim development authority (*q*). [226]

Authorities Responsible for the Enforcement of Planning Schemes.

—The authority or authorities who are to be responsible for enforcing and carrying into effect the provisions of a planning scheme must be specified in the scheme itself (*r*). The following authorities are eligible, namely, the local authority for any area included in the scheme or the local authority for a neighbouring district, a county council, or a joint body specially constituted by the scheme. Any one of these authorities may be made the sole responsible authority for all purposes of the scheme, or two or more of them may be made responsible authorities either for different provisions of the scheme or for different parts of the area to which the scheme applies (*s*). Where a joint body is made the responsible authority for any of the purposes of a scheme, the scheme must contain suitable provisions for the constitution and incorporation of the joint body, and for conferring

(l) S. 36 (6), (7).

(m) See title TOWN PLANNING SCHEMES, "Interim Development."

(n) S.R. & O., 1933, No. 236. S. 10 of the Act, under which the general interim development order is made, also empowers the Minister to make special orders in respect of the interim development of particular areas, the provisions of which would supersede those of the general order.

(o) Art. 5 of the general development order, which was originally designed to cover the transitional period between the earlier and the present Acts.

(p) See note (n), *supra*.

(q) S.R. & O., 1933, No. 236, Art. 11. See also title LONDON TOWN PLANNING.

(r) S. 11 (1).

(s) S. 11 (2).

upon it the necessary powers and duties, and must specify how its expenses are to be defrayed, and for what purposes and in what manner it may borrow money. The joint body may be authorised to co-opt additional members provided that at least three-fourths of the total membership are members of a constituent authority of the joint body (*a*). There are special provisions with regard to responsible authorities for schemes in the administrative County of London (*b*). [227]

It will be observed that the authority responsible for preparing the scheme is not necessarily the authority responsible for administering it (*c*). In normal practice, the local authority is made the responsible authority in its own district for all provisions in the scheme, except those relating to county roads and building lines thereon, for which the county council is made the responsible authority. The county council is also sometimes made the responsible authority for other provisions in a scheme, such as those relating to the reservation of large open spaces, agricultural areas and aerodromes. [228]

The authority constituted the "responsible authority" may, if so empowered by the scheme, make supplementary orders for supplementing the provisions of the scheme, including subsidiary and consequential variations of the scheme itself (*d*); and it may make general development orders permitting building operations to proceed on land subject to a temporary prohibition or restriction in this respect (*e*) and may grant applications to commence building operations on such land pending the making of a general development order (*f*). [229]

The responsible authority is liable for the payment of compensation arising from the scheme (*g*), has the right to recover betterment (*h*) and may withdraw or modify all or any provisions of a scheme which give rise to a claim for which an award of compensation has been made (*i*). It may purchase by agreement or, subject to certain conditions, compulsorily, any land required for the purposes of the scheme (*k*), and may enter into agreements with public departments (*l*) and landowners (*m*) with the object of securing that the development of land under their control shall be in conformity with the general tenor of the scheme. [230]

If the responsible authority fail to enforce or carry out the provisions of a scheme the Minister may by order, enforceable by *mandamus*, require it to do so. Alternatively he may himself act in the place and at the expense of the authority or, where the responsible authority is the council of a rural district, or of an urban district with a population (at the last census) of less than 20,000, may empower the county council so to act (*n*). [231]

(a) S. 11 (3).

(b) S. 50. See title LONDON TOWN PLANNING.

(c) S. 13. See title TOWN PLANNING SCHEMES, "Enforcement of Scheme."

(d) S. 14. See title TOWN PLANNING SCHEMES, "Supplementary Orders."

(e) S. 15. See title TOWN PLANNING SCHEMES, "General Development Orders."

(f) S. 16. See title TOWN PLANNING SCHEMES, "General Development Orders."

(g) S. 18. See title COMPENSATION AND TOWN PLANNING.

(h) S. 21. See title BETTERMENT.

(i) S. 24.

(k) S. 25. See title COMPULSORY PURCHASE OF LAND.

(l) S. 33.

(m) S. 34. See title TOWN PLANNING AGREEMENTS WITH OWNERS.

(n) S. 36 (4).

Delegation of Powers to Town Planning Committees (other than Joint Committees).—A local authority or a county council may appoint a committee for any purposes of the Act, and may delegate to the committee any of their powers, except the power of levying a rate or borrowing money or relinquishing in favour of the county council any of their powers and duties. At least three-fourths of the members of such a committee must be members of the appointing authority (o). The appointment of a town planning committee, to consider and advise the council upon all matters in connection with the preparation and administration of town planning schemes and the control of interim development, is very desirable. How far such a committee should be empowered to act in place of the council depends upon the manner in which the work of the council is organised ; but, in this connection, it should be noted that the regulations (p) require that resolutions to adopt a draft scheme or make a scheme shall be passed by the local authority. If a committee is purely advisory, *i.e.* has no delegated powers, the section just cited (o) will not apply. [232]

Expenses of Town Planning Authorities and How Defrayed.—Expenses incurred by town planning authorities comprise those of and incidental to the preparation of the scheme, any expenditure in connection with the administration of the general interim development order (or a special interim development order) and the cost of enforcing and carrying out the provisions of the scheme.

The cost of preparing a town planning scheme normally includes the purchase and mounting of the necessary ordnance maps and bringing them up to date by ground or aerial survey ; the cost of obtaining a list of owners and occupiers, and the making and keeping of the register of owners and occupiers ; the cost of the advertisements and the printing and service of the personal notices required by the regulations ; the cost of expert advice and of the technical staff employed ; the cost of printing the scheme and the cost of such local inquiries as may be held in connection with its approval.

Expenditure under the general interim development order is usually limited to such expense as may be entailed in contesting appeals against decisions of the authority, but it includes any contributions which the authority may see fit to make towards damage suffered or expense incurred by an applicant for an interim development permit which has been refused or granted subject to conditions (q), and the cost of purchasing, if required by the applicant, any land ripe for immediate development in respect of which an appeal has been dismissed solely on the ground that the land ought to be reserved for a public open space (r). [233]

The cost of enforcing and carrying a scheme into effect, apart from administrative expenditure on staff and its accommodation, comprises compensation payable to owners of property injuriously affected, the purchase of land reserved for public purposes and the cost of executing works ; it thus depends almost entirely on the nature of the proposals included in the scheme which have, accordingly, to be adjusted to the

(o) S. 48.

(p) S.R. & O., 1933, No. 742 ; Arts. 12, 14.

(q) S. 10 (4).

(r) S. 10 (6).

financial capacity of the authority, taking into account such assistance as it may be able to obtain from other authorities. [234]

Any local authority (*s*) may contribute towards expenses incurred by any other authority on matters preliminary to a scheme (*t*) or on the preparation or carrying into execution of a scheme (*u*), and a county council may contribute towards the cost of the preparation of schemes by local authorities and joint committees (*a*). A local authority or a joint committee may contribute towards the expenses incurred by landowners either in the preparation of a scheme proposed by them and adopted by the local authority or joint committee, or in co-operating with the authority preparing the scheme (*b*). [235]

All expenses incurred under the Act are defrayed, in the case of the City of London, as expenses chargeable to the general rate; in the case of a county borough or county district, as expenses under the P.H.As.; and in the case of a county council, either as general or special expenses as the council may determine. Before determining to levy as general expenses a contribution towards expenses incurred by any authority in connection with the carrying into execution of a scheme, the county council is required to notify every other local authority in the county which has passed a resolution to prepare a scheme that has become effective and any such local authority may appeal to the Minister against the county council's decision (*c*). Any expenses incurred under the Act by a metropolitan borough are defrayed as expenses chargeable to the general rate (*d*). Special provision is made as to expenses incurred by the Common Council of the City of London on schemes which form part of a general proposal for planning an area comprising land in the City and land in the County of London (*e*). Power to borrow money for the purposes of the Act is conferred upon local authorities and county councils (*f*) and upon metropolitan boroughs (*g*). [236]

(*s*) Within the meaning of the Local Loans Act, 1875; 12 Halsbury's Statutes 242.

(*t*) *E.g.* an aerial survey or a civic survey and advisory planning report.

(*u*) S. 30; 25 Halsbury's Statutes 504.

(*a*) S. 29; *ibid.*

(*b*) S. 28; *ibid.*

(*c*) S. 49 (1); *ibid.*, 515.

(*d*) S. 50 (8); *ibid.*, 518. See title LONDON TOWN PLANNING.

(*e*) S. 49 (1); *ibid.*, 515. See title LONDON TOWN PLANNING.

(*f*) S. 49 (2); *ibid.*, 516.

(*g*) S. 50 (8); *ibid.*, 518.

TOWN PLANNING SCHEMES

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See also title : TOWN AND COUNTRY PLANNING and titles there listed.

The purpose of a planning scheme is to regulate all development, or re-development, in the area to which it applies, with the general object of securing healthy and agreeable conditions, the best possible distribution of the functional elements of town and country (*a*), a well-planned system of roads of adequate width, the preservation of buildings or places of particular interest or beauty, and the protection, generally, of both urban and rural amenities. [237]

POWER TO MAKE SCHEMES AND LAND TO WHICH THEY MAY APPLY

The making of planning schemes is authorised by the Town and Country Planning Act, 1932 (*b*), which repealed and re-enacted, with modifications, some extensions, and some restriction of powers, the town planning legislation previously in force (*c*). A scheme may be prepared in respect of any land, whether urban or rural (*d*) or whether there are or are not buildings thereon (*e*). Outside the administrative County of London, for which special provision is made (*f*), the necessary powers to make planning schemes are vested in local authorities who may act either independently, or jointly through the appointment of a joint committee (*g*). The authorities responsible for enforcing the scheme must be specified in the scheme (*h*). [238]

A local authority or a joint committee may by resolution decide to prepare a scheme in respect of any land within, or in the neighbourhood of, the district of the authority or (in the case of a joint committee) the districts of the authorities constituting the joint committee, or alternatively, may adopt, with or without modifications, a scheme proposed by all or any of the owners of any such land (*i*).

The resolution to prepare or adopt a scheme does not become effective until approved by the Minister of Health, who has to be satisfied (1) that the inclusion in the area of the scheme of land already built upon is justified on the grounds either that public improvements are likely to be made, or that other development is likely to take place within such a period of time, and on such a scale as to make the inclusion of the land in a scheme expedient, or that the land comprises buildings or other objects of architectural, historic, or artistic interest, or that the land is so situate that the general object of the scheme would be better secured by its inclusion, or (2) in the case of land which is neither already built upon, nor in course of development, nor likely to be developed, that the land is so situated in relation to land which is already built upon, or in course of development, or on which development is likely to take place, as to make its inclusion in the scheme expedient (*k*). [239]

(*a*) *I.e.* the industrial, business and residential areas, open spaces and agricultural areas.

(*b*) 32 Halsbury's Statutes 470. (This Act is referred to hereafter in this title as the Act, and section references in the footnotes are to this Act, unless otherwise appearing.)

(*c*) S. 54 and Sched. V; 32 Halsbury's Statutes 522, 535.

(*d*) Preamble to the Act; *ibid.*, 472.

(*e*) S. 1; *ibid.*

(*f*) See title LONDON TOWN PLANNING.

(*g*) See title TOWN PLANNING AUTHORITIES.

(*h*) S. 11 (2), (3); 32 Halsbury's Statutes 485; and clause 4 of Model Clauses referred to *post*, p. 142. See title TOWN PLANNING AUTHORITIES.

(*i*) S. 6; 32 Halsbury's Statutes 475. The adoption of complete schemes proposed by owners is unusual. The normal practice is for specific proposals to be agreed with owners and incorporated in a scheme prepared by the town planning authority. See title TOWN PLANNING AGREEMENTS WITH OWNERS.

(*k*) S. 6 (2); 32 Halsbury's Statutes 475.

These limitations (which do not apply to any scheme proposed by owners of not less than two-thirds of the area to be planned, and approved by not less than three-fourths of the owners) (*l*) are designed to prevent the making of planning schemes for completely "static" land, that is to say, areas in which changes are not so likely to take place as to warrant their inclusion in a scheme. In the case of built areas, in deciding whether development (or re-development) is likely to take place within such a period of time and on such a scale as to make their inclusion in a scheme expedient, account should be taken not only of development which has already taken place or is contemplated in the area, but also of what has occurred in areas similarly situated. It should also be remembered that the term "development" includes any change in the use of land or buildings (*m*). In the case of land unlikely to be developed, the conditions that have to be satisfied are sufficiently wide to justify the inclusion of any rural land of which, by reason of its situation with regard to developed, developing or developable land, the amenities stand in need of protection. Owing, mainly, to the conditions created by modern transport facilities, the protection afforded by a planning scheme is needed by all rural land within a wide radius of any large centre of population. The power to include in a scheme land comprising objects or places of natural interest or beauty justifies the inclusion, not merely of their immediate surroundings, but also adjoining areas, the protection of which may reasonably be held to be an integral part of the protection of the objects or places themselves. [240]

THE CONTENTS OF SCHEMES

A planning scheme consists of a series of clauses which, by reference to a map, prescribe the nature of the development and the conditions under which it may take place, and provide for the reservation of land for new roads and road widenings, for open spaces and other public purposes and, in certain circumstances, prohibit or restrict (either temporarily or permanently) the use of land for building purposes (*n*).

For the guidance of planning authorities, the M. of H. have issued a set of model clauses (*o*) embodying the provisions normally included in a planning scheme in the form which the Minister is prepared to approve. He is, as a rule, only prepared to approve deviations from or additions to the model clauses when he is satisfied that the local circumstances require them. The M. of H. have also issued a circular giving instructions for the preparation of the map (*p*).

The principal matters dealt with in a scheme are described in the following paragraphs : [241]

Reservation of Land for Open Spaces and other Purposes.—Land may be reserved in a scheme for public and private open spaces, public allotments, cemeteries, car parks and other purposes of a similar kind. The effect of the reservation is to prevent the land being developed for

(*l*) S. 6 (2), proviso ; see also note (*i*), *ante*, p. 141.

(*m*) See definition of "development" in s. 53 ; 32 Halsbury's Statutes 520.

(*n*) Ss. 11, 12, and Sched. II ; *ibid.*, 484, 485, 528.

(*o*) M. of H., Town and Country Planning, Model Clauses for use in the preparation of schemes, June, 1939. Hereinafter these clauses are referred to as Cl. These clauses are published in two editions: one without notes for use in drafting schemes, and the other with explanatory notes by the M. of H.

(*p*) Memo. T. & C. P., January 5, 1939 (Preparation of Planning Maps).

any other purpose and, in the case of land reserved for public open spaces and playing fields, to give the authority power to acquire it either by agreement or compulsorily (*q*). The reservation of land for any public purpose of the kind mentioned, *supra*, implies purchase by the authority, but it does not necessarily follow that the land must be purchased immediately. The date of its acquisition will depend partly on the urgency of making the land available for its reserved use and partly on the building prospects of the land. If it is ripe for development, the compensation payable for the restriction of its use may be nearly equal to the value of the land and, in this case, immediate purchase is the most economical course. If it is farm land, immediate purchase may entail disturbance and severance and, in such a case, it would be better to pay the compensation, which would be small, and delay purchase (at the restricted value) until either possession of the land is actually required or the remainder of the adjoining land is about to be developed. [242]

(1) *Public Open Spaces*.—The provision of open spaces to meet the anticipated requirements for playing fields and to preserve as parks and public walks land specially suited for this purpose, is one of the most important functions of the scheme. In a rural district, the main requirement is for a suitable playing field in each village; in an urban district, both parks and playing fields are an essential part of the working equipment of the town. In deciding the area of land to be reserved in the planning scheme for these purposes, the requirements of the population which may be anticipated when the area is fully developed, in accordance with the provisions of the scheme, should be taken into account. The standard recommended by the National Playing Fields Association (*r*) is six acres of playing fields per 1,000 of the population, of which not less than four acres should be in public ownership. [243]

(2) *Private Open Spaces*.—Where it is desirable that land used for such purposes as private parks, golf courses, playing fields, or forming the curtilage of buildings of architectural or historic interest, should be preserved for these purposes, but remain in private ownership, it may be reserved as private open space. Such a reservation is subject to compensation and, as a rule, should only be made by agreement with the owner providing that no compensation will be claimed. Land reserved as a private open space can be acquired by agreement but not compulsorily (*s*). [244]

(3) *Allotments*.—Sect. 8 of the Allotments Act, 1925 (*t*), imposes on planning authorities an obligation to consider what permanent provision should be made for allotments, and a certificate from the M. of A. that this has been done has to be rendered when the scheme is submitted to the M. of H. for approval.

The lower building densities, now commonly adopted, render it, in most cases, unnecessary to provide allotments for new residential areas. Allotments are still required, however, to supplement the inadequate gardens of existing houses at high densities and, as a general rule, an area equivalent to that actually being used for the purpose

(*q*) S. 25; 25 Halsbury's Statutes 502, authorises the purchase by agreement, and in most cases compulsorily, of any land required for the purposes of the scheme. The note to model clause 7, however, says that this power should not be used where full powers of purchase already exist under other Acts.

(*r*) National Playing Fields Association, Annual Report, 1937-1938.

(*s*) Cl. 7 (2).

(*t*) 1 Halsbury's Statutes 319.

should be reserved for acquisition and permanent dedication as public allotments. In framing proposals, the local land commissioner of the M. of A. should be consulted. [245]

In a rural district the parish council is the authority responsible for the provision of allotments, but as it is not a local authority as defined in the Town and Country Planning Act, 1932 (*u*), it cannot be made a responsible authority for any purpose under a scheme. The R.D.C. must, therefore, be the responsible authority for this purpose, and should obtain from the parish council an indemnity against any claim for compensation which might arise from a reservation of land for allotments. [246]

(4) *Cemeteries*.—The need for reserving land for public cemetery purposes (*a*) should be considered, and there may be occasional need to provide similarly for extension of churchyards or similar places of burial (*b*). This, however, presents certain complications, particularly as to the "responsible authority," since it is the "responsible authority" under the scheme who will be liable for any compensation, and it may not be feasible to obtain an indemnity from the church authorities. Under the Cemeteries Clauses Act, 1847 (*c*), as amended by the Burial Act, 1906 (*d*), a cemetery may not be constructed within a hundred yards of dwelling-houses without the consent of the owners, lessees and occupiers (*e*). The authority should therefore ascertain whether such consents will be forthcoming, unless it is found possible to follow the more usual practice, and reserve more land than the minimum for this purpose. [247]

(5) *Aerodromes*.—Land may be reserved for aerodromes (*f*). The pamphlet issued by the Air Ministry entitled "The Principles Governing the Planning and Zoning of Land for Aerodromes" (*g*) and a model clause prepared by the M. of H., should be studied in this connection. In addition to reserving the land required for the aerodrome itself, the scheme should provide for controlling the height of buildings and trees on adjoining land. As such a restriction is subject to compensation and as land adjoining an aerodrome is not a suitable place for buildings, it should as far as possible be reserved for agriculture, playing fields, allotments or other similar purposes. [248]

Streets. (1) *Reservation of Land for Street Widening and New Streets*.—Provision for the improvement and extension of the existing system of traffic roads is an important part of most planning schemes. Such provision should not be confined to improvements and new roads of immediate urgency but should anticipate future requirements. The method adopted is to reserve the land required for street widenings and new streets (*h*). The effect of the reservation is not to interfere with the existing use of the land, but to prevent it being used for a new purpose, which would involve costly demolition or re-instatement when the new road is constructed or the improvement is carried out. It also gives the authority power to acquire the land either by agreement or compulsorily. It must, however, be remembered that reservation involves a liability to compensation. [249]

(*u*) S. 2 (1); 25 Halsbury's Statutes 472.

(*a*) Supplementary, cl. 7A.

(*b*) Sched. II. (4); 25 Halsbury's Statutes 528.

(*c*) 2 Halsbury's Statutes 255.

(*d*) *Ibid.*, 253.

(*f*) Sched. II. (5); 25 Halsbury's Statutes 528.

(*g*) A. M. Pamphlet 76, 1st ed., May, 1938.

(*e*) See title CEMETERIES.

(*h*) Cl. 5.

(2) *Control of Streets Laid Out by Owners.*—Road proposals to be included in the scheme should be confined to roads likely to be of traffic importance and those required for the guidance of development. The alignment of minor estate roads is best settled when the estate comes to be developed, and this is done by including clauses to enable the authority to control the layout of estate streets (*i*) and to require suitable connecting streets between adjoining estates (*k*). It is not necessary for all the streets in a building estate to be of the full width, with the division into carriageway and footways prescribed for a street of the same type in any local bye-laws; a scheme, therefore, normally gives the authority power to permit streets to be of less width than, and/or to be divided between carriageway and footways in a manner different from what is required by the local bye-laws. In some cases a greater width of street can be required in exchange for reduced width of carriageway and footways (*l*). On the other hand, if an estate street will be required to carry through traffic, the authority may require it to be laid out at any width they consider necessary, but frontagers may not be charged more than the cost of making up the street to bye-law standard. If a more expensive street is required, the highway authority must meet the extra cost (*m*). [250]

(3) *Execution of Street Works and Apportionment of Cost.*—The authority can take power to execute street works on (*n*) and lay sewers under (*o*) land reserved for streets and to charge the expense against the frontagers (*p*). If, at the time of executing the works, the frontage land is agricultural land, the amount so charged cannot be recovered until the land ceases to be so (*pp*). [251]

(4) *Co-ordination of Powers under Scheme and under Restriction of Ribbon Development Act, 1935 (q).*—This Act contains provisions which have much the same effect as some which can be inserted in a scheme. As duplication is undesirable, the M. of H. has issued a circular (*r*) explaining how the two sets of powers should be co-ordinated. For this purpose, roads are divided into two classes: major roads and minor roads. Major roads include all those which are, or which are intended ultimately to be, of a width of sixty feet or more, and from which access to individual properties will normally be restricted (*s*). Minor roads include those required principally for estate development or for links of mainly local interest (whatever their width may be) from which access to property will not be restricted (*t*). For major roads a standard width under the Restriction of Ribbon Development Act, 1935 (*a*), should be adopted (*b*); if, however, when the scheme is being prepared, a major road proposal is under consideration, but a standard width has not been adopted, it should be included as a reservation in the scheme (*c*). A clause (*d*) should be inserted in the scheme to provide

(*i*) Cl. 18.

(*k*) Cl. 19.

(*l*) Cl. 18 (4) and Sched. I.; 25 Halsbury's Statutes 525. It should in this context not be overlooked that since early in this century the model bye-laws have recognised, and probably all local bye-laws in force now do recognise, different types of street for different purposes.

(*m*) S. 27; 25 Halsbury's Statutes 504: cls. 15, 18 (6).

(*n*) Cls. 12, 13.

(*o*) Cl. 17.

(*p*) Cl. 15.

(*pp*) *Ibid.*, sub-clause (5), which see for further limitations.

(*q*) 28 Halsbury's Statutes 79.

(*r*) T. & C. P. 10 (revised), January, 1939.

(*s*) *Ibid.*, art. 3.

(*t*) *Ibid.*, art. 9.

(*a*) S. 1; 28 Halsbury's Statutes 81.

(*b*) T. & C. P. 10, art. 3.

(*c*) *Ibid.*, arts. 5, 6.

(*d*) Cl. 10. This should be studied as a whole.

that when a standard width is adopted to take the place of a reservation in the scheme, the provisions relating to the reservation shall cease to apply. If, when the scheme is being prepared, a standard width has already been adopted or an improvement line has been prescribed under sect. 33 of the P.H.A., 1925 (*e*), the land affected should be indicated on the scheme map by a special notation (*f*). Minor roads should be dealt with under the scheme (*g*). [252]

(5) *Restriction of Access to Classified Roads*.—A scheme may limit the number and prescribe the sites of new streets entering a classified road or a proposed road which is declared by the M. of T. to be intended to be a classified road, without rendering the authority liable to pay compensation so long as neighbouring land is provided with reasonable means of access (*h*). If it is possible to fix the number and positions of the new streets in advance, model clause 16 should be used, but if, as is often the case, this is not practicable, alternative clause 16 should be adopted (*i*), enabling the authority, subject to appeal to the M. of H., to give or withhold consent to the entry of a new street into any of the classified or prospective classified roads specified in the clause. [253]

It should be observed that the Restriction of Ribbon Development Act, 1935 (*k*), also contains powers to restrict access which apply to existing classified roads and may, with the approval of the M. of T., be applied to any road; the restriction, moreover, applies not only to access by new streets but also to access to individual properties (*l*). The exercise of these powers is subject to compensation (*m*). The M. of T. attaches great importance to the restriction of all means of access to major roads (*n*) and will not be prepared to contribute to the cost of proposals in respect of them unless he is satisfied that the restriction is provided for (*o*). [254]

(6) *Stopping up or Diversion of Public Highways*.—A scheme may include a provision for a public highway, or a portion of one, to be stopped up or diverted when a new street providing an alternative route and shown on the scheme map has been opened for public traffic (*p*). This procedure is cheaper and more convenient than that available under the ordinary law. It may be adopted when the scheme includes a short link road to take the place of a detour, or to stop up or divert a footpath which crosses a building estate in such a way as to interfere with well-planned development. Where it is proposed to stop up or divert a highway in a rural parish, the consent of the parish council and of the R.D.C. (if they are not preparing the scheme) should be obtained in accordance with the provisions of sect. 13 of the L.G.A., 1894 (*q*). The site of a highway stopped up under a scheme may be acquired compulsorily (*r*) (unless the person entitled to the right of

(*e*) 13 Halsbury's Statutes 1128.

(*f*) T. & C. P. 10, art. 4.

(*g*) *Ibid.*, art. 9.

(*h*) S. 19 (1) (*i*), (2) (*iv*); 25 Halsbury's Statutes 493, 495: cls. 16, 78.

(*i*) Model clauses, Appendix II., No. 5.

(*k*) 28 Halsbury's Statutes 79.

(*l*) Ss. 1, 2; 25 Halsbury's Statutes 472.

(*m*) S. 9 (3); *ibid.*, 481.

(*n*) For definition, see *ante*, p. 145.

(*o*) T. & C. P. 10, art. 3.

(*p*) Cl. 21.

(*q*) 10 Halsbury's Statutes 785, and note to cl. 21. See also title DIVERSION AND STOPPING UP OF HIGHWAYS.

(*r*) S. 25 (1) (*c*); 25 Halsbury's Statutes 502.

pre-emption desires to purchase it (s)) if the order is submitted to the M. of H. within twelve months of the date of stopping up (a). [255]

(7) *Delegation of Responsibility in Respect of County Roads*.—If the powers of the county council as highway authority have been delegated (b) to the borough or district council, the responsibility under the scheme should be delegated likewise (c); but if these powers have not been delegated, then only the powers and duties in relation to the control of the layout and construction of estate streets should be delegated under the scheme (d). [256]

Building Lines.—Building lines in existing streets may either be fixed by the scheme and shown on the map (e) or they may be fixed, under powers contained in the scheme, when the authority considers it necessary to do so (f). In new streets, forming part of the scheme, building lines should be fixed by the scheme and shown on the map (g); in other new streets, building lines are fixed when the lay-out of the streets is being approved (h). Provision is made for any modification in the building lines that may be required if a standard width under the Restriction of Ribbon Development Act, 1935 (i), is subsequently adopted (j). [257]

The effect of a building line (e) is to prevent any building or erection, other than boundary walls and fences, from being erected in front of it. The main object in prescribing building lines is to preserve the amenities of the road and of the buildings fronting it, but they may also be used to keep the land clear of buildings in case a widening of the road, not proposed in the scheme, may ultimately prove to be necessary (k), or where a road frontage is already developed (especially in a business zone), to secure a widening gradually as re-development takes place. [258]

Where land has not within five years formed part of the site of a building, a scheme may exclude compensation for a building line shown on the scheme map, unless it will make the owner's land less suitable for the erection of buildings (l). If the building line is on the site of a building or land which within two years has formed part of the site of a building, the claim must (subject to agreement) be submitted within twelve months after the date on which a new building is erected on the site (m). If it is not possible to erect a new building on the site in conformity with the building line, the claim may be made within twelve months after the demolition of the old building or the date at which the scheme comes into operation, whichever is the later; and if such a claim is to be made the authority must be given the opportunity of acquiring the land and building compulsorily (n). [259]

(s) Sched. III., Pt. II., s. 3; 25 Halsbury's Statutes 531.

(a) Sched. III., Pt. I., s. 2; *ibid.*, 529.

(b) See title DELEGATION OF HIGHWAY POWERS.

(c) Cl. 4 (3).

(e) Cl. 24.

(d) Alternate cl. 4 (2), (3).

(f) Cl. 23.

(g) Even after the scheme comes into operation there is power in the Roads Improvement Act, 1925, s. 5; 9 Halsbury's Statutes 223, to fix building lines, but it is usual, and better practice, to do it by the scheme.

(h) Cl. 22.

(i) 28 Halsbury's Statutes 79.

(j) Cl. 25.

(k) Annual report of the M. of H. for 1937-1938 (Town and Country Planning), p. 17.

(l) S. 19 (1) (k), (2) (v); 25 Halsbury's Statutes 493, 495.

(m) S. 22 (3); *ibid.*, 500.

(n) S. 22 (3), (4); *ibid.*

Sect. 2 of the Restriction of Ribbon Development Act, 1935 (o), provides that on classified roads and other roads to which the section has been applied, no building may be erected within 220 feet of the middle of the road without the consent of the highway authority. It may sometimes, particularly in built-up areas, be found desirable to rely on this control instead of fixing a building line in the scheme. It should be noted that where a building line is fixed in the scheme, control under the Restriction of Ribbon Development Act cannot be exercised in addition. [260]

Restrictions on Building and use of Land. (1) *Use Zones.*—It is one of the functions of a scheme to ensure that the land shall be allocated for the use for which it is best fitted and most needed. For this purpose the land is divided into use zones of which the principal are residential, business and industrial zones (p). An important "rural zone," as also "coastal" and "seashore" zones were added in 1938 to those for which the model clauses provide (pp). The rural zone makes it largely unnecessary to have an agricultural reservation. For a building in its proper zone consent is not required. Other purposes are specified for which the land or buildings on it may be used by consent of the authority; other uses are entirely prohibited. The scheme may exclude compensation for these restrictions, provided, *inter alia*, that the restrictions on the use of land, otherwise than in respect of building operations, are only applied to prevent danger or injury to health, or serious detriment to the neighbourhood (q). Where the consent of the authority is required the scheme should provide for appeal. For any zone, certain purposes may be specified, to which the authority may not consent until the proposal has been advertised (r) and objections considered, and the scheme should provide that if the authority give their consent, anyone who has submitted an objection may appeal (s). [261]

(2) *Temporary Restriction of Development Pending a General Development Order.*—Land may be included in a zone where no building operations may be undertaken unless and until the authority issue a general development order to give their special consent (t). The authority must consider the desirability of making a general development order at three-year intervals and if, on application, they fail to make such an order, the M. of H., on appeal, may make one. Pending the making of an order, consent to a specific building project in this zone may not be refused if it complies with the other provisions of the scheme, unless the authority is satisfied that other suitable land is available on reasonable terms, and either that the operations would involve danger or injury to health owing to the lack of services and the provision of such services would be premature or involve excessive expenditure of public money, or that they would be likely to involve serious injury to the amenity of the locality. Appeal against refusal of consent lies to the M. of H. If, at the time the scheme is being made, it is not practicable to forecast the use to which land, subject to a general

(o) 28 Halsbury's Statutes 82.

(p) Cl. 30.

(pp) *Ibid.*, and Circular 1750, dated 15th December, 1938.

(q) S. 19 (1) (f), (g); 25 Halsbury's Statutes 493: cl. 78. The section is fully annotated in Lumley's Public Health, 11th ed., pp. 1027 *et seq.*

(r) A notice must also be served on any owner on the register of owners whose property is affected and on associations on the register (see *post*, p. 163); s. 7 (7); 25 Halsbury's Statutes 479.

(s) Cl. 32.

(t) Ss. 15, 16; 25 Halsbury's Statutes 488, 489, cl. 30.

development order, should be put when it is developed, that matter can be left to be settled by a supplementary order (*u*) when the general development order is made (*a*). The objects of the general development order procedure are to enable the authority to guide the expansion of a town or village into areas where sewers and other services already exist or can be economically provided, and to prevent the amenity of rural land being destroyed by building operations before there is a reasonable prospect of its development on sound lines. A scheme may exclude compensation for dealing with land in this way (*b*). [262]

(3) *Permanent Prohibition or Restriction of Building*.—Building may be prohibited or restricted on land where it would be likely to involve danger or injury to health, or excessive expenditure of public money on the provision of public services (*c*). This may be applied to areas which are low and boggy or liable to flood, or high and difficult of access. A qualified prohibition, or restriction, under which certain kinds of buildings are allowed, is usually more appropriate. The scheme may exclude compensation for a prohibition or restriction of this kind (*d*). [263]

(4) *Saving for the Winning of Minerals*.—A scheme may not exclude compensation for restriction on the winning of minerals by underground working, and may only exclude compensation for restriction on surface working if the land is included in the residential zone, has been substantially developed for residential purposes at the time the scheme is made or is not owned before the material date (*e*) by someone proposing to work the minerals (*f*). The method adopted to give effect to this is to indicate on the map by a special edging the land where compensation is to be excluded for restrictions on surface working, and to include in the scheme a saving for all underground and surface working on any land except that indicated by the edging (*g*). [264]

(5) *Restriction of Building Density*.—In order to prevent the overcrowding of buildings on the land and to preserve residential amenities, a limitation is usually applied to residential and general business areas, which takes the form of specifying the maximum number of single dwelling-houses per acre which may be erected (*h*). The densities prescribed should accord with the type of development for which, having regard to their situation and to the demand in the locality, the various parts of the area are most suitable. The effect of the density restriction is to prescribe average densities in each zone which may not be exceeded. It does not require each house to have a plot of the average size but, to prevent abuse of this latitude, it is usual to specify a minimum plot size (*i*). [265]

The density control is exercised by means of a system of land units (*h*). Anyone proposing to undertake residential development submits to the authority a proposal for a land unit, accompanied by a plan of the land to be developed. The authority may require the applicant to submit a plan showing the whole of his adjoining land not already included in a land unit, or such part thereof as they think fit. The authority then declares that the land or any part thereof which

(*u*) See *post*, pp. 156, 163.

(*b*) S. 19 (1) (*d*); 25 Halsbury's Statutes 493: cl. 78.

(*c*) S. 12 (1) (*e*); *ibid.*, 486.

(*d*) S. 19 (1) (*e*); *ibid.*, 493: cl. 78.

(*e*) For explanation of the term "material date," see *post*, p. 152, note (*n*).

(*f*) S. 19 (2) (iii.); 25 Halsbury's Statutes 494.

(*g*) Cl. 34.

(*h*) Cls. 35, 36, 37.

(*a*) Note to cl. 30.

(*i*) Cl. 38.

they think fit, is to form one or more land units. A land unit should not usually include land in more than one density zone, where density zones are employed, but there is otherwise no objection to making it as large as the applicant desires. It should include land which it is proposed to lay out as open space, land proposed to be used for roads, and half the width of any adjoining road dedicated to the public. The authority may also allow it to include adjoining land which they have acquired from the applicant for public open space or allotments; but it should not include existing dwelling-houses, or the site of any building other than a dwelling-house either existing or proposed. When a land unit has been declared, the number of dwelling-houses which may be erected on it is limited to the number obtained by multiplying the number of acres it contains by the average number of houses per acre specified in the scheme for the area or zone in which the land unit lies. [266]

It is not usual to apply the density control to flats; but the authority is given power to give or refuse consent (subject to appeal) to a proposal to build flats, after taking into consideration the size of the flats proposed and the number of persons they are designed to accommodate (*l*). Other residential buildings, such as hotels and residential clubs, are not usually subjected to any density control. The scheme may exclude compensation for restrictions on density of both houses and flats (*m*). [267]

(6) *Restriction of the Proportion of Site which may be Built on.*—In order further to prevent overcrowding of buildings on the land, a scheme usually limits the proportion of a site which may be occupied by buildings (*n*). The proportion varies, being less for single-storey buildings than for buildings of a greater height, and less for dwelling-houses and blocks of flats than for other buildings. In order to assist in preserving the amenity of residential streets, the maximum number of houses which may be built in one continuous block and the minimum distance between dwelling-houses are usually specified for each density zone (*o*). A scheme may exclude compensation for these restrictions (*p*). [268]

(7) *Restriction of the Height of Buildings.*—The height of buildings is controlled by fixing a maximum height and by providing that they shall not project above a line drawn from the centre of the street at an angle from the horizontal which is generally 45 degrees in residential zones and 56 degrees elsewhere. A scheme may exclude compensation for these restrictions (*q*)-and the authority should be given power to relax them in proper cases (*r*). [269]

(8) *Control of the External Appearance of Buildings.*—The Act provides that if a scheme gives the authority power to control the external appearance of buildings, it must provide for appeal from their decision, either to a court of summary jurisdiction, or to a specially constituted tribunal. It may be one of the grounds of appeal that compliance with the decision of the authority would involve an increase in the cost of the building, which would be unreasonable having regard to the character of the locality and of the neighbouring buildings.

(*l*) Cl. 41. See also cl. 42 and the notes thereon in the 1939 issue of the model clauses.

(*m*) S. 19 (1) (*a*), (*b*); 25 Halsbury's Statutes 493.

(*n*) Cl. 42. See also Civil Defence Act, 1939, s. 70; 32 Halsbury's Statutes 878.

(*o*) Cl. 43.

(*p*) S. 19 (1) (*a*); 25 Halsbury's Statutes 493: cl. 78.

(*q*) S. 19 (1) (*c*); *ibid.*: cl. 78.

(*r*) Cl. 44.

Schemes usually provide for appeal to a special tribunal and specify that it shall consist of a magistrate, a surveyor and an architect (s). A scheme may exclude compensation for this control (ss). [270]

(9) *Control of the Siting of Buildings*.—The model clauses contain a most useful clause to control the siting of buildings (t). This provides that before any building can be erected, an estate development plan (tt) must be submitted, giving full particulars of the proposals for development, not only of the site under consideration, but also of adjoining land belonging to the applicant. The authority may disapprove the proposals if they consider that the means of communication to the proposed building is not satisfactory (u), or that the proposals are likely to prejudice the development of neighbouring land or injure amenity. These are very wide powers, and enable the authority to prevent such development of road frontage as would interfere with the proper development of the back land, and to prevent various other forms of ill-considered and undesirable development. There is no power to exclude compensation for the exercise of this control, and the clause contains provision for appeal from the decision of the authority. [271]

(10) *Saving for Agricultural Buildings*. No provision in a scheme with respect to buildings applies to buildings occupied together with land used for agriculture, unless the site of the building is reserved by the scheme for any purpose, the carrying out of which in the future would necessitate the removal or alteration of the building (a), and a clause to this effect should be included in the scheme (b). [272]

Preservation of Trees and Protection of Woodlands.—A scheme may include a provision for the registration of single trees and groups of trees for preservation (c); such trees may only be cut down or lopped for certain specified reasons or by the consent of the responsible authority. The single trees are not as a rule specified in the scheme, but are registered after it has come into operation, but the groups of trees should, if possible, be specified in the scheme and indicated on the scheme map. A scheme may also specify areas of woodland to be protected. If any part of such a woodland is felled, the owner has to replant in accordance with good forestry practice (d). If a dispute arises between the authority and an owner as to what is or is not in accordance with good forestry practice, either party may refer the matter to the Forestry Commissioners whose decision is final. The exercise of these powers may lead to a claim for compensation. [273]

Control of Advertisements(e).—A scheme may specify land as protected in respect of advertisements. The effect of this is that the authority may order the removal of an advertisement or hoarding which seriously injures the amenity of such land. Appeal against such an order lies to a court of summary jurisdiction. It is important to observe that an advertisement in the area may be dealt with in this way if it seriously injures the amenity of protected land, whether it is actually on the protected land or not. Thus, for example, an advertisement in an industrial area which is not protected may be removed if it seriously

(s) S. 12 (1), Sched. IV.; 25 Halsbury's Statutes 485 : cl. 45.

(ss) S. 19 (1) (c); *ibid.*, 493, cl. 78.

(t) Cl. 46.

(u) See the provisions of the model clause.

(a) S. 12 (3); 25 Halsbury's Statutes 486.

(c) S. 46 (1); 25 Halsbury's Statutes 515 : cl. 49.

(d) S. 46 (2); *ibid.*, 516 : cl. 50.

(e) S. 47; *ibid.*, 513 : cls. 52, 87.

(tt) Cl. 61.

(b) Cl. 86.

injures the amenity of a residential area which is protected. Certain classes of advertisements are exempt, and the responsible authority may authorise the display of any particular class of advertisement.

Advertisements and hoardings erected before the date of the resolution to prepare the scheme are exempted for a period of five years from the coming into operation of the scheme (*f*). Advertisements may also be controlled under bye-laws made under the Advertisements Regulation Acts (*g*). The control in any particular area may be effected under the bye-laws or under the scheme, but not under both (*h*). In rural areas control under bye-laws, though somewhat different in form, is almost as effective as control under a scheme. If, therefore, the bye-laws are already in force in a rural area, they can be allowed to remain and no control need be provided by the scheme. In urban areas, it is probably better that control should be under the scheme and that the bye-laws should be suspended. [274]

Control of Petrol Filling Stations.—Petrol filling stations may be controlled either by bye-laws made under the Petroleum (Consolidation) Act, 1928 (*i*), or by a scheme, but not under both simultaneously. In a scheme, the control usually takes the form of making filling stations subject to the consent of the authority in any zone, and also subject to control under the external appearance and advertisement clauses. The bye-laws lay down rules relating to the materials of construction of filling stations and to the number and form of advertisements which may be exhibited, and they may specify areas in which filling stations are prohibited altogether. Outside the areas of total prohibition, they cannot exercise any control over the situation of a filling station nor require it to provide suitable space for the fuelling of vehicles. Both of these matters are subject to control under the provisions of a scheme, but whether control shall be exercised in the scheme (the bye-laws, if any, being suspended), or shall continue to be by bye-laws, depends largely on the preference of the local authority concerned. [275]

Existing Buildings.—In order that compensation in respect of the provisions relating to buildings may be excluded, a scheme must provide that existing buildings may be maintained and their existing use continued, that reasonable alterations and (in proper cases) extensions of existing buildings may be made, and that existing buildings which are destroyed or demolished may in certain cases be replaced (*k*). [276]

An existing building is defined as one erected before the material date, or the erection of which was begun or contracted for before that date. A building erected in accordance with an interim development order (*l*) or a permission granted under such an order is also an existing building (*m*). The material date is defined as the date on which the resolution to prepare the scheme took effect or such later date as may be fixed in the scheme (*n*). [277]

(*f*) S. 47; 25 Halsbury's Statutes 513: cls. 52, 87.

(*g*) Advertisements Regulation Act, 1907; 13 Halsbury's Statutes 908, and Advertisements Regulation Act, 1925; 13 Halsbury's Statutes 1113.

(*h*) See *post*, p. 154.

(*i*) 13 Halsbury's Statutes 1170.

(*k*) S. 19 (2); 25 Halsbury's Statutes 494. For details, see sub-paragraph (*c*) of paragraph (ii.) of this sub-section. See also clauses in Part VI. of the model clauses.

(*l*) See *post*, p. 156.

(*m*) S. 53; 25 Halsbury's Statutes 520: cl. 66.

(*n*) S. 53, cl. 2; and see *post*, p. 159.

The model clauses provide that all existing buildings may be maintained, with a proviso that a responsible authority may serve a notice (called a warning notice) on the owner of an existing building or work which, if not such a building or work, would have contravened the scheme, that the building will be dealt with as a contravention of the scheme. Such a notice renders the authority liable to a claim for compensation (o). The owner of such a building may apply to the authority for their approval of the building and if such approval is given a warning notice cannot be issued, and any such notice already issued is cancelled (p). Subject to the payment of compensation, however, the authority may prevent the alteration or rebuilding of an existing building which contravenes the scheme (q). [278]

Savings.—The Act includes several savings and it is usual to embody them in a scheme. The more important are those mentioned below :

(1) *For Powers of Local Authorities.*—A scheme should include a clause to prevent it interfering with development by a local authority, whether or not that making the scheme under powers conferred on it by Parliament, on land specified in the Act or order conferring such powers, or with development approved by the M. of H. expressly or by way of sanction to a loan or consent to the appropriation of land, provided that when application is made for the Minister's approval, a notice of the application is served on the authority responsible under the scheme (r). [279]

(2) *For Works below High-Water Mark.*—A scheme may not authorise the execution of works below high-water mark of ordinary spring tides except with the consent of anyone whose consent would have been required if there were no scheme, and of the Board of Trade. If a scheme includes any foreshore or tidal land, a clause to this effect should be included in it (s). [280]

(3) *For Crown Lands.*—Crown land need not be excluded from a scheme and a public department may, with the consent of the Treasury, enter into an agreement with a local authority, joint committee, or responsible authority, to provide that their land shall be laid out and used in accordance with the scheme (t), which should include a provision that it shall not be enforceable against the Crown or its tenants, except as may be provided in any such agreement (u). [281]

(4) *For Statutory Undertakers.*—No provision in a scheme applies to land or buildings that belongs to and is held or used by statutory undertakers for the purposes of their undertaking, unless they consent. The consent may not be unreasonably withheld and in the event of a dispute on that point, the decision rests with the M. of H. (a). It is not essential to obtain the consent of undertakers to inclusion of their land in proposals for reservation or zoning ; but until they have consented, the provisions will not apply while the land continues to be held and used for the purposes of the undertaking. It is, however, necessary to obtain their consent to a reservation, as without it the land cannot be acquired (b). [282]

(o) S. 19 (4) ; 25 Halsbury's Statutes 495 : cl. 54.

(p) Cl. 55.

(q) S. 19 (3) ; 25 Halsbury's Statutes 495 : cl. 58.

(r) Cl. 83.

(t) S. 33 ; 25 Halsbury's Statutes 505.

(a) S. 41 ; 25 Halsbury's Statutes 511.

(b) Sched. III., Pt. II (2) ; *ibid.*, 531.

(s) Cl. 84.

(u) Cl. 85.

Agreements.—With owners. See title TOWN PLANNING AGREEMENTS WITH OWNERS. Agreements may also be entered into with Government departments in respect of the application of provisions of a scheme to Crown lands (c). [283]

Compensation (d).—Subject to a number of important exceptions (e), anyone who suffers damage by the coming into operation of a scheme may, within twelve months after the scheme comes into operation, claim compensation equal to the amount by which his property is decreased in value and any resulting injury to his trade or profession (f). Where a provision in a scheme is substantially the same as one in some other Act, or could have been included in a scheme, order, regulation or bye-law under some other Act, no more compensation can be claimed than could have been claimed under the other Act (g). [284]

Where a scheme gives the authority power to take action which might give rise to a claim for compensation, the scheme should provide for compensation to be claimed within twelve months after the date on which the authority takes the action (h). [285]

Within a month after an award of compensation, the responsible authority may withdraw the provision which gave rise to the claim. If they do this they must, within three months, submit a varying scheme (i) to give effect to their decision (k). [286]

Betterment (l).—Where the effect of a scheme, or of any work done by the authority under a scheme, is to increase the value of any property, the authority may claim betterment equal to 75 per cent. of the increase (m). This right is so hedged with conditions as to make a successful claim almost impossible. It is, however, often used as a counterclaim to a claim for compensation. [287]

Suspension of Bye-laws and Sections of other Acts.—The provisions of a scheme operate in addition to any bye-laws, orders or regulations in force in the area; and these should be suspended by the scheme so far as they are similar to or inconsistent with any of the scheme provisions (n). The scheme should also in many cases suspend the operation of sect. 3 of the P.H. (Buildings in Streets) Act, 1888 (o), and of sect. 5 of the Roads Improvement Act, 1925 (p), where the scheme provides a building line, and sects. 83 and 84 of the P.H.A., 1925 (q), where the land is reserved in the scheme for road widening (r). [288]

ENFORCEMENT OF SCHEME AND PENALTIES FOR CONTRAVENTION

The main power to enforce a scheme is contained in sect. 18 of the Act (s). It entitles the authority to remove, pull down or alter, so

(c) See sub-heading "For Crown lands," *ante*, p. 154.

(d) See also title COMPENSATION FOR TOWN PLANNING.

(e) A note as to whether compensation may or may not be excluded is made *ante*, when explaining the provisions. A list of the exceptions is given in the Act s. 19 (1), (2); 25 Halsbury's Statutes 492, 493, and they are fully dealt with under the title COMPENSATION FOR TOWN PLANNING.

(f) S. 18 (1); 25 Halsbury's Statutes 492.

(g) S. 20 (1), (8); *ibid.*, 496.

(h) S. 22 (2); *ibid.*, 500: cl. 77.

(i) See pp. 155, 163, *post*.

(k) S. 24; 25 Halsbury's Statutes 501.

(l) S. 21; *ibid.*, 497.

(m) See also title BETTERMENT. For time limits, etc., see s. 21.

(n) S. 11 (1) (b).

(o) 18 Halsbury's Statutes 810: cl. 26.

(p) 9 Halsbury's Statutes 223.

(q) 13 Halsbury's Statutes 1128, 1130.

(r) Cl. 75.

(s) 25 Halsbury's Statutes 486.

as to bring into conformity with the scheme any building or work which conflicts with the scheme ; to prohibit any land or building from being used for a purpose which contravenes the scheme ; to reinstate any land being used for a purpose which contravenes the scheme unless it is an existing use (*t*) ; and to execute any work required under the scheme where delay in executing it is interfering with the efficient operation of the scheme (*u*). Before adopting any of these courses, the authority must serve a notice on the owner and occupier and any other person affected, who may appeal to a court of summary jurisdiction (*a*). Unless the building is an existing building or work (*b*) the expenses incurred by the authority may be recovered summarily as a civil debt (*b*). Certain uses of a building or land may be prohibited under the section, and any person who uses any land or building for a purpose which has been so prohibited is liable to a fine not exceeding £50 and a further fine of not exceeding £20 for each day the use is continued after conviction (*c*). The model scheme makes the contravention of, or the failure to comply with, any of its provisions an offence subject to maximum penalties of 40s. for each offence and a further 20s. for each day the offence continues after conviction ; and there is a special penalty, not exceeding £50, for the unauthorised cutting down or wilful destruction of a registered tree (*d*). [290]

APPEALS

A scheme gives the authority considerable discretion to give or withhold consents, to make orders and serve notices, and there is usually an accompanying right of appeal. Apart from a special provision as to appeals relating to the control of external appearance of buildings (*e*), the Act lays down that appeals should be either to a court of summary jurisdiction, with right of appeal to quarter sessions, or to the M. of H. whose decision is to be final (*f*). It is for the authority making the scheme to decide which tribunal to specify for appeals under any particular clause (*g*), but it should be observed that the Minister is not prepared to take appeals relating to the layout and construction of streets by owners ; the control of the height of hedges and fences to prevent obstruction to view along roads ; the preservation of trees ; the control of advertisements and the provision of loading accommodation for business or industrial premises (*h*). The usual practice is to make appeals on all matters, other than the foregoing, to be to the Minister (*i*). It may be noted that when an appeal lies to a court of summary jurisdiction, the parties may agree to refer the matter to the Minister or to arbitration ; and that when it lies to the Minister, they may agree to refer it to arbitration (*k*). [291]

VARIATION AND REVOCATION OF SCHEMES

The provisions of a scheme in operation may be varied in the following ways :

By a Varying Scheme.—A scheme may be varied or revoked by the

(*t*) See definition in s. 53 of the Act ; 25 Halsbury's Statutes 520.

(*u*) Ss. 13 (1), 20 (2) ; 25 Halsbury's Statutes 436.

(*a*) S. 13 (4).

(*b*) S. 13 (6).

(*c*) S. 13 (7).

(*d*) Cl. 73.

(*e*) See *ante*, p. 150.

(*f*) Ss. 39, 40 ; 25 Halsbury's Statutes 510.

(*g*) Note to cl. 63.

(*h*) See the note to Cl. 63 in the model clauses.

(*i*) Cl. 63.

(*k*) S. 40 ; 25 Halsbury's Statutes 510.

making of a fresh scheme covering the same area or part of it (*l*). Such a scheme may be made in the ordinary way laid down for making a scheme, or it may be made by the Minister, on the application of a responsible authority under the original scheme or of a joint committee or of any other authority or person concerned (*m*). [292]

By a Supplementary Scheme.—Where a regional scheme is in operation, its provisions may be augmented by a supplementary scheme incorporating, with or without modification, the provisions of the original scheme and adding others (*n*). This procedure is rarely adopted. Variation in this case can be only consequential. [293]

By a Supplementary Order.—A scheme may include a provision giving power to any responsible authority under the scheme, or to any local authority or county council concerned, to make supplementary orders for the purpose of supplementing or varying the scheme, or to adopt such orders proposed by landowners (*o*).

The procedure followed in making a supplementary order is identical with that of the preparation of a scheme (*p*). [294]

CONTROL OF DEVELOPMENT DURING PREPARATION OF SCHEME

Between the date on which the resolution to prepare a scheme takes effect (*q*) and the date on which the scheme comes into operation, development (*r*) is controlled under a general interim development order made by the Minister of Health (*s*), who may also make a special interim development order in relation to any particular area. The general development order permits development carried out under powers conferred by Act of Parliament or by an order which has been approved by resolution of each House of Parliament, on land specified in the Act or order, development by a local authority under certain conditions, the maintenance of existing buildings (*t*) and development in accordance with an approved scheme (*u*), and empowers the authority (*a*) to permit other development. A local authority when giving permission may attach conditions (*b*). A scheme should provide that when it comes into operation any such conditions which are not inconsistent with the scheme may be enforced as though they were imposed under the scheme (*c*). The order also empowers the authority, with the consent of the M. of H., to suspend the operation of any provisions of local Acts, orders, bye-laws or regulations, when this is expedient in order to promote the proposed development. This power is often invoked, for example, to enable an authority to grant relaxations in the width of estate roads in accordance with proposals in the scheme (*d*). [295]

(*l*) S. 8 (3); 25 Halsbury's Statutes 481.

(*m*) S. 8 (4), (5); *ibid.*

(*n*) S. 9; *ibid.*

(*o*) S. 14; *ibid.*, 488; cl. 89.

(*p*) S. 14 (2); *ibid.*, 481.

(*q*) See *post*, p. 159. It should be noted that this control is not available where the resolution is for a supplementary or varying scheme.

(*r*) Development includes all building and any change of use of land or buildings, but does not include agricultural development: s. 53; 25 Halsbury's Statutes 520.

(*s*) S. 10; 25 Halsbury's Statutes 482, and the Town and Country Planning (General Interim Development) Order, 1933; S.R. & O., 1933, No. 236. This order is referred to hereafter under this title as the order.

(*t*) For the meaning of the term "existing building," see *ante*, p. 152.

(*u*) Order, art. 4.

(*a*) See heading "Interim Development Authorities" under title TOWN PLANNING AUTHORITIES.

(*b*) S. 10 (2); 25 Halsbury's Statutes 482.

(*c*) Cl. 68.

(*d*) S. 10 (8); 25 Halsbury's Statutes 484; and Order, art. 9.

It should be noted that the authority may not refuse permission, except in the special circumstances specified in the Act and order, for: (1) the erection or use of a new building on the site of an existing building or of one that was standing within two years before the material date (e); (2) the alteration or extension of existing buildings (f); (3) the erection of additional buildings on the same site as an existing building; (4) the erection of buildings required in connection with sports or recreation grounds; and (5) the erection of outbuildings in the curtilage of a dwelling-house (ff); and that before permitting development which would conflict with a preliminary statement, the interests must be considered of those whose land is being or has been developed in accordance with the statement, and of any others affected by the proposal (g). [296]

An application for permission for interim development must be in writing and be accompanied by plans in duplicate. If the application does not contain sufficient information, the authority must ask for the additional information they require within seven days of the receipt of the application. If the applicant does not furnish the additional information within seven days of the receipt of the requisition, the application may be refused. Where the authority is also the bye-law authority, as is usually the case, the submission of an application under the bye-laws is deemed to be an application for interim development permission (h). The grant or refusal of permission must be in writing, and if conditions are imposed or the application is refused, the reasons for the authority's decision must be stated in writing (i). Unless the authority give this notification to the applicant within two months of their receipt of the application (or such longer period as the applicant may agree in writing to allow) unconditional permission is deemed to have been given (k). If the authority refuses consent or imposes conditions, the applicant may, within twenty-eight days (or such longer period as the Minister may allow) appeal to the M. of H., whose decision is final (l). The M. of H. has power to direct a local inquiry upon the appeal. [297]

The effect of an interim development permission is to give the building or use, in respect of which the permission is granted, the same status as that of an existing building or an existing use (m). A refusal of permission cannot be enforced at the time, but development during the interim period, except in accordance with a permission, becomes a contravention of the scheme unless it complies with the provisions of the scheme (n). A scheme comes into operation when it does not prevent development in accordance with an interim development order or permission thereunder, of the building or unless the work has been started or contracted for before the scheme comes into operation, or the permission has been scheduled to the scheme or has been granted in the interval between the resolution to submit the scheme for the Minister's approval and the coming into operation of the scheme. Development permitted after that date or the permission for which is

(e) For the meaning of the term "material date," see *ante*, p. 152.

(f) For the meaning of the term "existing building," see *ante*, p. 152.

(ff) S. 10 (3); 25 Halsbury's Statutes 482; and Order, art. 6; S.R. & O., 1933, No. 236.

(g) Order, art. 7.

(h) *Ibid.*, art. 8.

(i) Order, art. 10.

(k) S. 10 (3); 25 Halsbury's Statutes 482.

(l) S. 10 (5); *ibid.*, 483.

(m) For the meaning of the terms "existing building" and "existing use" and an explanation of their status under a scheme, see *ante*, p. 152.

(n) Cl. 67.

included in the schedule is given protection in the scheme. It should be noted, however, that within two months after the scheme comes into operation, a notice can be served in relation to such protected development, if it does not comply with the provisions of the scheme, making it a contravention of the scheme. Such a notice renders the authority liable to a claim for compensation (o). [298]

If the authority are satisfied that their refusal of an interim development application or that the conditions attached to their consent will cause the applicant damage or expense, they may offer a contribution towards such damage or expense (p), and if there is an appeal, the Minister must take into consideration any such offer before coming to his decision (q). If the Minister dismisses the appeal or imposes conditions, any additional damage the appellant may have suffered owing to his decision is taken into account when compensation is being assessed after the scheme has come into operation (r). The effect of these provisions would seem to be that if an owner develops land during the interim period and is involved in loss or additional expense by reason of having made his proposals to conform with the scheme proposals, he will not be able to claim compensation, unless he first submits proposals unacceptable to the authority and appeals against their decision. The appeal can, however, be avoided if the authority make a satisfactory voluntary contribution. If an appeal is dismissed on the ground that the land ought to be reserved in the scheme for a public open space, and the Minister is satisfied that the land is suitable for immediate development, the owner may require the authority to acquire the land (s). The scheme must provide for compensation in cases where expenditure is incurred to comply with a condition imposed or confirmed by the Minister and the expenditure becomes abortive owing to an alteration to the scheme before it is approved (t). [299]

In coming to a decision on a particular application, the authority will, in practice, have regard to the proposals to be included in the scheme. In the early stages of the preparation of the scheme, before the proposals have been worked out, the authority may not be able to do more than to see that proposed buildings are set well back from roads which may have to be widened; to prevent the use of land and the erection and use of buildings for purposes, or at heights or densities, which are considered likely to be dangerous to health or detrimental to the amenities of the neighbourhood or likely to involve undue or premature expenditure of public money in the provision of services, and to exercise control of the external appearance of buildings. In the later stages, when the proposals have taken definite shape, an application should be granted, in the normal course, only if the development conforms with the proposed provisions of the scheme, subject to the exercise of such discretion as the proposed provisions of the scheme allow. [300]

During the early stages in the preparation of a scheme, an owner sometimes submits zoning proposals for his land, in the form of an interim development application, not because he has any immediate intention of developing but solely in order to ensure that his land shall be zoned in the scheme in a way which he considers will ultimately be profitable to him. The interim development procedure is not intended for this purpose (u.) [301]

(o) Cl. 66.

(q) S. 10 (5); *ibid.*

(s) S. 10 (6); *ibid.*, 484.

(u) Memorandum T. & C. P. 2,

(p) S. 10 (4); 25 Halsbury's Statutes 483.

(r) S. 18 (2); *ibid.*, 492.

(t) S. 10 (7); *ibid.*

(u) Memorandum T. & C. P. 2, issued by M. of H., March, 1933.

PROCEDURE FOR MAKING SCHEMES

The procedure in connection with the making, approval, validity and coming into effect of planning schemes is laid down partly in the Act (*a*) and partly in the Town and Country Planning Regulations (*b*) made by the Minister under sect. 37. It is divided into definite stages, namely, the resolution to prepare a scheme; the preparation and adoption of the draft scheme; the making of the scheme and submission to the M. of H.; the approval of the scheme by the Minister; the laying of the scheme before Parliament; the opportunity to challenge its validity, and the coming into operation of the scheme. [302]

The Resolution to Prepare a Scheme.—The first formal step in the procedure is for the local authority (or joint committee) to pass a resolution deciding to prepare (*c*) a planning scheme (*d*) in respect of an area (*e*) the boundaries of which are defined on a map, known as the "resolution map," which must also indicate those parts of the area that are already built upon (*f*). Before passing a resolution every interested local authority (*g*) must be consulted (*h*), and at least one month before the resolution is passed, a copy of it must be sent to every such authority and facilities must be given to them to inspect and copy the accompanying map. A representation made within the month by any of these authorities must be considered before the resolution is passed (*i*). Notice of the resolution must be published, as soon as may be, in a local newspaper (*k*) stating that the resolution map will be on deposit for public inspection and that suggestions for the modification of the area of the proposed scheme may be sent to the authority within a specified period. Any written suggestions received within the time specified must be considered by the authority which, if it thinks any modification of the area to be desirable, must amend the map and pass a fresh resolution (*l*). [303]

A resolution to prepare a planning scheme does not take effect until it is approved by the M. of H. (*m*) and, accordingly a duplicate of the resolution map and a certified copy of the resolution (or of the amended map and resolution) must be transmitted, as soon as may be, to the Minister, together with copies of all suggestions for the amendment of the area which have not been met or withdrawn and a statement of the grounds on which the authority consider that land already built upon and land unlikely to be developed may properly be included in the scheme (*n*). If the area to which the original resolution applied has been modified, notice of the submission to the Minister of the amended resolution must be advertised; and suggestions for the further amendment of the area may be sent to the Minister within a

(a) Ss. 6—9, 37, and First and Fourth Schedules; 25 Halsbury's Statutes 475—481, 525, 533.

(b) S.R. & O., 1933, No. 742; referred to hereafter under this title as the Regulations.

(c) Or adopt a scheme proposed by owners; this course (as explained in footnote (i), *ante*, p. 141) is rarely followed, but the procedure throughout is the same as that for the preparation of a scheme initiated by the local authority.

(d) S. 6; 25 Halsbury's Statutes 475.

(e) See "Power to make schemes and land to which they may apply," *ante*, p. 141.

(f) Regulations, art. 10.

(g) This term is defined in art. 2 of the regulations.

(h) S. 6 (3); 25 Halsbury's Statutes 476.

(i) See "Notices," *post*, p. 163.

(m) S. 6 (2); 25 Halsbury's Statutes 475.

(i) Regulations, art. 30.

(l) Regulations, art. 10.

(n) Regulations, art. 11 (1).

specified period (*o*). The Minister may, if he considers it necessary, order a local inquiry to be held (*p*) for the purpose of hearing representations from any interested local authority (*q*) or person and must, after considering all suggestions that have been submitted to him, notify the authority that he approves the resolution, with or without modifications, or that he disapproves it (*r*). The resolution becomes effective from the date on which the Minister approves it. Within fourteen days (*s*) of its taking effect notice thereof must be published in the *London Gazette* and also in a local newspaper, and within six months (*s*) a personal notice must be served on the owner and occupier of every hereditament in the area as shown by the latest assessment under Schedule A. of the Income Tax Act. The names and addresses for this purpose may be obtained, on payment, from the Surveyor of Taxes for the area (*t*). [304]

If an authority has not decided to prepare a scheme and if the M. of H., after holding a local inquiry, is satisfied that a scheme ought to be prepared for any land in the authority's district, the Minister has power, by order, to require the authority to prepare a scheme (*u*). Such an order has the same effect as a resolution passed by the authority and approved by the Minister. Similarly, if the Minister is satisfied, after holding a local inquiry, that an authority has failed to adopt a scheme which has been proposed by owners and which ought to be adopted, he may order the authority to adopt it (*a*). [305]

A resolution to prepare a scheme, passed by a local authority or a joint committee, may be revoked as to the whole or any part of the area to which it applies, either by a subsequent resolution passed by the local authority or joint committee or by order of the M. of H. The revoking resolution requires the approval of the Minister, who in giving his approval or in making an order must secure the right to claim compensation of any person whose property has been injuriously affected by reason of an interim development decision on appeal, or who has incurred expenditure to comply with conditions imposed on the grant of an interim development application which has been rendered abortive by the revocation (*b*). [306]

Preparation and Adoption of Draft Scheme (including Work Preparatory Thereto).—The next stage is the preparation of the draft scheme (*c*), but before proposals can be formulated, a preliminary survey of the area must be carried out and the ordnance map (usually to the scale of 1 : 2,500) brought up to date (*d*). Complete details of all new development need not be shewn, but any new road and any recent improvements in an existing road must be accurately indicated. The presence of recent buildings should be indicated by showing

(*o*) Regulations, art. 11 (2).

(*p*) *Ibid.*, art. 11 (3).

(*q*) *Ibid.*, definition in art. (2).

(*r*) *Ibid.*, art. 11 (4).

(*s*) The Minister may extend any of the time limits given in the regulations (art. 35) if he thinks fit, but this particular time limit is fixed in the Act and the Minister has no power to extend it. If the notices are not issued in time, a fresh resolution must be passed.

(*t*) S. 7 : 25 Halsbury's Statutes 478.

(*u*) S. 36 (1) ; *ibid.*, 507.

(*a*) S. 36 (3) ; *ibid.*, 508.

(*b*) S. 6 (4), (5) ; *ibid.*

(*c*) The regulations under former Town Planning Acts required an intermediate stage, namely the preparation of a preliminary statement and its submission to the Minister for approval. Under the current regulations (S.R. & O., 1933, No. 742) the preparation of a preliminary statement is not necessary and, in modern practice, is not normally undertaken.

(*d*) If possible, this preparatory work should be done before the resolution to prepare the scheme is passed ; in practice, however, this course is rarely adopted.

approximately accurate outlines of development. An aerial survey may be found valuable for these purposes. Later on, when the proposals are being worked out, existing buildings and curtilages which are affected by road proposals or which lie close to the boundaries between different zones will need to be plotted accurately. In carrying out the survey, attention should be given to the following points :

- (1) The physical features of the area, including such matters as the presence of minerals, the nature of the subsoil, and the uses for which land is specially suitable or unsuitable.
- (2) Statistics of the distribution and tendencies of the population and of the principal occupations followed in the locality.
- (3) Transport services and statistics of traffic on important roads.
- (4) The type, distribution and trend of business, industrial and residential development.
- (5) Existing and projected public services and their economical range.
- (6) Open spaces, allotments and general amenities.
- (7) Buildings or other objects of architectural, historic or artistic interest.
- (8) Public works contemplated in the area. [307]

As soon as tentative planning proposals have been worked out, the owners of land and other interested persons should be consulted and their co-operation secured (e). The most convenient way to do this will be found to be to issue a circular to all the owners of undeveloped land whose names and addresses can be ascertained, inviting them to call at the offices of the authority to confer with the official deputed to prepare the proposals. At these conferences, the scope and objects of the scheme and the detailed proposals should be explained, and modifications to meet the owners' views discussed. This opportunity should be taken of ascertaining the boundaries of the owners' land and names and addresses of the owners of adjoining land. [308]

District valuers have been authorised by the Board of Inland Revenue to give advice to authorities preparing schemes (f). Their advice will consist chiefly of drawing attention to proposals which may involve particularly heavy claims for compensation, either when the scheme comes into operation, or when land is acquired under the scheme. They will also draw attention to any proposal which they think would involve a landowner in special hardship. The district valuer's advice should be sought as soon as the tentative proposals have been worked out. It is strictly confidential and will not include definite valuations except where definite agreements for acquisition or appropriation involving loan sanctions are proposed. [309]

The draft scheme must be completed and adopted by resolution of the authority not later than twenty-four months from the date on which the resolution to prepare the scheme took effect. It may not be adopted earlier than three months from the date on which the service of the notices intimating the coming into effect of the resolution to prepare the scheme was completed (g). [310]

Before the resolution making the scheme is passed, the clauses will have to be printed, and it is advisable, though not essential, that

(e) Regulations, art. 32. See also title TOWN PLANNING AGREEMENTS WITH OWNERS.

(f) M. of H., Memorandum T. & C. P. 134 (revised), 1935.

(g) *Ibid.*, art. 12 (1). See *ante*, p. 160.

they should be printed before the draft scheme is adopted. The M. of H. have made arrangements with H.M. Stationery Office for the printing of schemes and all arrangements for printing should, therefore, be made through the Ministry who have issued a memorandum of instructions on the subject (*h*). The M. of H. have also issued instructions for the preparation of the map (*i*). [311]

At least two months before the draft scheme is adopted, a copy of the clauses must be sent to every interested local authority (*k*) and a representation made by any of these authorities must be considered before the draft scheme is adopted. The resolution adopting the draft scheme must be passed at a meeting of the authority of which special notice indicating the business to be transacted has been given to each member (*l*). The authority must give notice (*m*) of the adoption of the draft scheme stating that the draft scheme and draft scheme map will be on deposit for public inspection and that any objections or representations may be submitted to the authority within a specified period. Any person who submits any objection or representation must be given an opportunity to appear and be heard by one or more members or officers of the authority (*n*). [312]

The Making of the Scheme and its Submission to the Minister of Health.—Within nine months from the date of the resolution adopting the draft scheme the authority must pass a resolution making the scheme and embodying any modifications they deem necessary as a result of their consideration of the objections to the draft scheme (*o*). The draft scheme map, may, with the consent of the Minister, be altered to make it into the scheme map (*p*). The resolution must be passed at a meeting of the authority of which special notice indicating the business to be transacted has been given to each member (*q*). Within a month after the passing of the resolution, a copy of the scheme and of the scheme map must be submitted to the Minister, with copies of any objections made to the draft scheme which have not been met or withdrawn, and with information about the scheme on a form supplied by the M. of H. (*r*). The authority must give notice (*s*) of the submission of the scheme, stating that the scheme and scheme map will be on deposit for public inspection, and that any objections or representations may be submitted to the Minister within a specified period (*t*). [313]

Approval of Scheme by Minister of Health.—The Minister considers the scheme and the objections and causes a local inquiry to be held by one of his inspectors at which any interested local authority or persons affected by the scheme may be heard (*u*). The inspector subsequently makes an inspection of the area. After further considering the scheme and the report of the inspector, and after consulting the authority, the Minister makes any modifications to the clauses he deems necessary and requires the authority to make modifications to the scheme maps in accordance with his instructions. It is important to note that once the resolution making the scheme has been passed, no alteration can

(*h*) M. of H. Memorandum T. & C. P. 9, 1936.

(*i*) M. of H. Memorandum T. & C. P., 5, 1939.

(*k*) This term is defined in art. 2 of the Regulations.

(*l*) Regulations, art. 12 (2).

(*n*) Regulations, art. 13.

(*p*) *Ibid.*, art. 14 (2).

(*r*) *Ibid.*, art. 14 (4).

(*s*) *Ibid.*, art. 14 (4), and M. of H., Form T. & C. P., 159.

(*t*) *Ibid.*, art. 14 (5).

(*m*) See *post*, p. 163.

(*o*) *Ibid.*, art. 14 (1).

(*q*) *Ibid.*, art. 14 (3).

(*u*) *Ibid.*, art. 15 (1).

be made to the clauses or the map except by the Minister or on his instructions. If, after submitting the scheme to the Minister, the authority find that there is some alteration which should be made, they should request the Minister to make it. [314]

The scheme and scheme map in the form in which the Minister proposes to approve them must be deposited for public inspection, and the authority must give notice of the intention of the Minister to approve the scheme, stating that any objections or representations, other than those already made, may be submitted to the Minister within a specified period. The authority may themselves make objections or representations, and, if the authority so request, the Minister will hold another public inquiry (a). If, as a result of these objections, or of the public inquiry, the Minister decides to make any further modifications he will inform the authority and, if the authority so request, he will hold another inquiry (b). In practice it is very unusual for either of these additional inquiries to be held.

The Minister will then approve the scheme, and the authority must give notice of the Minister's approval stating that the scheme and scheme map will be on deposit for public inspection, and that the scheme will be laid before Parliament. If the Minister should disapprove the scheme, the authority must give notice of the disapproval (c). [315]

Laying of Scheme before Parliament, Validity and Date of Operation of Scheme.—When the scheme has been laid before each House of Parliament for twenty-one days on which that House has sat, the authority must give notice in the form laid down in the regulations (d), that it is capable of coming into operation. Any person may question the legality of the scheme before the High Court within six weeks of the date of this notice. At the end of this period, the scheme comes into operation and its validity cannot afterwards be questioned. [316]

PROCEDURE FOR MAKING SUPPLEMENTARY SCHEMES, VARYING SCHEMES, SUPPLEMENTARY ORDERS (e), AND GENERAL DEVELOPMENT ORDERS (f)

The procedure for making supplementary schemes and varying schemes is similar to that for making original schemes with minor alterations to suit the different circumstances (g). The procedure for making supplementary orders and general development orders is also similar to that for making schemes with a few simplifications, except that general development orders need not be laid before Parliament (h). [317]

NOTICES

When the authority give notice of the Minister's approval of a resolution to prepare a scheme (i) they must include a statement as to the rights of persons concerned to have their names and addresses registered for the purpose of the service of subsequent notices (k).

(a) Regulations, art. 16.

(b) *Ibid.*, art. 17.

(d) *Ibid.*, art. 19 and Second Schedule; and Act, First Schedule, Pts. I. and II.; 25 Halsbury's Statutes 525, 526.

(e) See *ante*, p. 156.

(g) Regulations, Part V.

(i) See *ante*, p. 159.

(c) *Ibid.*, art. 18.

(f) See *ante*, p. 156.

(h) *Ibid.*, Part VI.

(k) S. 7 (2); 25 Halsbury's Statutes 478.

Those who can require their names and addresses to be registered are owners of property in the area (including a lessee the unexpired term of whose lease exceeds three years) and persons claiming to be such owners (*l*), any association representing owners of property within the district of the authority, and any local association representing business or industry (*m*). The register is kept by the authority; and when a name is added to the register (which may be done at any time), the authority must inform the person or association concerned. The authority may revise the register from time to time (*n*).

When in the course of the procedure, the authority has to give notice of any matter, the notice must be published at least once during each of two successive weeks, with an interval between each publication of at least six clear days, in a newspaper circulating in the area (*o*), and a copy of the notice must be served on every person or association on the register (*n*). Notice must also be served on the following :

Every interested local authority (*p*); the Minister of Agriculture and Fisheries; the Commissioners of Works; the Minister of Transport; the Postmaster-General; the Board of Education; the Electricity Commissioners; and any statutory undertakers with powers in the area (*q*). [318]

REGISTERS AND FACILITIES FOR INSPECTION OF SCHEME

After the scheme has come into operation, the authority must keep the following available for public inspection (*r*) :

- (1) The scheme and scheme map.
- (2) Agreements scheduled to the scheme.
- (3) Interim development permissions scheduled to the scheme.
- (4) Interim development permissions given after the date of the resolution to submit the scheme to the Minister.
- (5) Consents given by statutory undertakers under sect. 41 (*s*).
- (6) A register of land units identifying each land unit by reference to a map (*t*).

They must also maintain a register of approvals, consents, authorities and permissions granted by them or on appeal from their decision, and of any conditions imposed or agreed in connection therewith (*u*). [319]

(*l*) The definition of "owner" is in s. 53; 25 Halsbury's Statutes 520.

(*m*) S. 7 (6); *ibid.*, 479.

(*o*) Regulations, art. 4.

(*p*) Defined in art. 2 of the regulations.

(*q*) Regulations, art. 2 (1), 5 (1).

(*s*) 25 Halsbury's Statutes 511. See *ante*, p. 153.

(*t*) Cl. 41.

(*n*) S. 7 (7); *ibid.*

(*r*) Cl. 81.

(*u*) Cl. 76.

TOWN'S MEETINGS

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Introductory.—In this title it is proposed to treat of town's or public meetings. A meeting is a gathering or assembly of a number of people for purposes of intercourse, entertainment, discussion, legislation and the like (*a*). A public meeting may be defined as a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, to which the public or any particular section of the public is invited or admitted, whether the admission thereto is general or restricted (*b*).

This title will deal with so-called "town's meetings," that is, meetings of local government electors called in pursuance of an Act of Parliament, *e.g.* in connection with the promotion of private bills; meetings called by the mayor in his official capacity to discuss and express an opinion on matters of public interest; and public meetings convened by persons interested in promoting them for social, political, or other purposes. [320]

Town's Meetings.—There are certain cases in which what are commonly called town's meetings must be held. Examples are cases of promotion of private bills by local authorities, Sunday cinematograph entertainments and the adoption of certain Acts of Parliament. See title ADOPTIVE ACTS.

On the Promotion of a Bill in Parliament.—In the case of the promotion of a bill in Parliament by a borough or urban district, sect. 255 of the L.G.A., 1933 (*c*), requires that the promotion shall be approved not only by the passing of two statutory resolutions by the council but also by the local government electors of the area of the authority (*d*), whose wishes are to be ascertained in the prescribed manner (*e*).

(*a*) Murray's Dictionary.

(*b*) See Report of Departmental Committee (1909), appointed to consider the duties of the police with respect to the preservation of order at public meetings.

(*c*) 26 Halsbury's Statutes 444.

(*d*) This approval, however, is not required in the case of a bill promoted by a borough, the sole purpose of which is to create the borough a county borough or extend the area of a county borough.

(*e*) See L.G.A., 1932, Sched. IX.; 26 Halsbury's Statutes 510.

The schedule provides that notice must be given by placards and by advertisement in at least one local newspaper in two consecutive weeks. The first notice must be given within seven days after the deposit of the bill and must state the title and objects of the bill, that the bill has been deposited, that copies may be inspected and purchased at a specified place within the borough or district, and that a public meeting of local government electors for the purpose of considering the question of the promotion of the bill will be held on a named day not less than fourteen days nor more than twenty-eight days after the first advertisement of the notice (paras. 1 and 2). The meeting of the electors must be held in accordance with the notice. The mayor or chairman, or if he is unable or unwilling, a person appointed by the council, presides at the meeting, but if none of these are present within ten minutes after the time appointed for the meeting, the meeting must choose an elector present at the meeting to preside (para. 3). It is the chairman's duty to satisfy himself that the meeting is properly convened. With the consent of the meeting, the person presiding may adjourn the meeting for not more than seven days (para. 4). On opening the meeting the person presiding or a member or officer of the council gives such explanation as he thinks expedient (para. 5). The question of the promotion of the bill is put by the person presiding, either by a resolution in favour of the promotion of the bill, or by separate resolutions in favour of the promotion of any provision of the bill but together covering the promotion of the whole bill, and the meeting shall decide (the voting being by show of hands) for or against any such resolution (para. 6). No amendment is admitted. The meeting may require the person presiding to deal with any provision of the bill by a separate resolution (para. 6 (b)). The person presiding explains the resolution. Unless a poll is duly demanded in the manner provided by para. 8 of the Schedule, the decision of the meeting on the resolution is final (para. 7). A poll may be demanded with respect to any resolution by one hundred electors or one-twentieth of the electorate whichever is the less by requisition within seven days after the date of the meeting or its adjournment. If the decision of the meeting is against the resolution the council may demand a poll (paras. 8, 9 and 10). In the case of an equality of votes at a meeting of electors the decision is to be taken as against the resolution voted upon (para. 17). The chairman has a vote in the first instance but not a casting vote. If the meeting or poll, as the case may be, is against the bill the council must withdraw it. [321]

Whether an entrant to a meeting of electors is a local government elector can be checked by reference to the register of electors. See title **BILLS, PARLIAMENTARY AND PRIVATE**. [322]

Under the Sunday Entertainments Act, 1932 (f).—In order to extend the power to allow the Sunday opening of cinemas to some areas a public meeting of local government electors is necessary in certain circumstances. By sect. 1 (5) the Act extends to every area where places were opened and used, within the period of twelve months ending on October 6, 1931, on Sundays, for the purpose of cinematograph entertainments in pursuance of arrangements made with the authorities in the area having power to grant licences under the Cinematograph Act, 1909, but it also applies to any borough or county district if it is extended to them by an order approved by a resolution passed by each House of

Parliament. Such approval is obtained by councils of county boroughs, boroughs, urban and rural districts, upon application to Parliament, by the procedure specified in the Schedule to the Act (g). Until such approval by Parliament, the licensing authorities in these areas have no power to allow places within their jurisdiction to be opened on Sundays for cinematograph entertainments. [323]

The schedule provides that the council shall publish, by means of placards and advertisement in at least one newspaper circulating in the borough or district, notice of their intention to submit to the Secretary of State a draft order applying for the extension to their area of the powers prescribed in sect. 1 of the Act. With the exception of rural districts, all councils making such application are then required to hold, on a day not less than fourteen nor more than twenty-eight days after the first advertisement of the notice, a public meeting of local government electors to consider the proposal that the draft order shall be submitted to the Secretary of State. If, after that meeting, objection is raised to the proposal by one hundred electors or one-twentieth of the electorate, whichever is the less, a poll of the electorate must be held. The meeting and the poll must be held in accordance with the procedure prescribed by Sched. IX. to the L.G.A., 1933 (h), with modifications. The expenses of a town's meeting or poll of electors are to be defrayed by the council out of the general rate (i), but there would, it is submitted, be nothing illegal in the council receiving from persons interested in the controversy on the one side or the other a gift of the amount of the ascertained expenses under the L.G.A., 1933 (k). [324]

If the proposal of a R.D.C. meets with objection in writing from the same number or the same proportion of the local government electors, a person appointed by the Secretary of State is to hold a public local inquiry to ascertain the public opinion in the district. See title SUNDAY ENTERTAINMENTS. [325]

Public Meetings. *Common Law.*—There is no right of public meeting recognised by English law nor is there any codified law regulating public meetings. The right as it is known to-day has arisen out of custom and is the outcome of the freedom of the individual, subject to his obeying the law, to act as he pleases, so that in considering the law relating to public meetings it is only necessary to consider the limitation or restrictions which are placed by the law upon the rights of individuals to go where they please and to do and to say what they please. [326]

On Public Open Spaces, etc.—There is no right on the part of the general public to hold meetings on a highway, common (l), public square or foreshore (m). But the fact that a public meeting is held on a highway does not necessarily make it unlawful. Whether it is unlawful or not depends on the circumstances in which it is held, e.g. whether

(g) 25 Halsbury's Statutes 926, and see Sunday Cinematograph Entertainment (Polls) Order, 1932; S.R. & O., No. 828.

(h) See *ante*, p. 166; 26 Halsbury's Statutes 510 (replacing the First Schedule to the Borough Funds Act, 1903; 10 Halsbury's Statutes 839—841).

(i) Sunday Entertainments Act, 1932, Sched., para. 9; 25 Halsbury's Statutes 926.

(k) S. 268; 26 Halsbury's Statutes 449.

(l) *De Morgan v. Metropolitan Board of Works* (1880), 5 Q. B. D. 155; 11 Digest 88, 1077.

(m) *Llandudno U.D.C. v. Woods*, [1899], 2 Ch. 705; 26 Digest 262, 19; *Brighton Corp'n. v. Packham* (1908), 72 J. P. 318; 44 Digest 77, 576; *R. v. Graham and Burns* (1888), 4 T. L. R. 212; 15 Digest 644, 6847.

an obstruction is caused (*n*) or whether the meeting is likely to cause a breach of the peace. Persons holding meetings on undedicated roads are, however, trespassers and may be restrained by the owners of the land (*o*). [327]

On Private Premises.—Public meetings when held indoors are seldom held in what is legally a public place, for even when a public building is hired or lent for the purpose of an association of promoters, it becomes in law for the time being a non-public place. The result is that the persons present at a public meeting so held are present only on the invitation of the promoters and by their leave and licence. They have no more right of entry in the first instance and no more right to remain if requested by the promoters to leave than if they had been invited to enter a private house by the occupier thereof. If they refuse to leave when called upon to do so by a chairman they become trespassers (*p*), and stewards removing them on the order of the chairman incur no liability unless they use undue violence. [328]

There is no power for the police to enter the premises except by the leave of the occupier of the premises or the promoter of the meeting, or when they have good reason to fear a breach of the peace (*q*). It is no part of their duty, if present, to eject trespassers, but acting in their private capacity as citizens they may assist to eject them if asked by the chairman or promoter of the meeting. In the case of a breach of the peace they must intervene and may arrest without a warrant a person committing such a breach. [329]

Meetings out of doors may, of course, be just as "private" within the meaning of this sub-heading as if held indoors, *e.g.* a political gathering in a nobleman's park, but are more often held in places where the police have powers of dealing with disorder and obstruction under the Highway and other Acts (*r*). [330]

Provision of Halls for Public Meetings.—A local authority other than a parish council may provide, let and furnish halls and other buildings for public meetings and assemblies (*s*), and may be authorised to purchase land compulsorily for the purpose (*t*). [331]

Regulation by Bye-laws.—Some local authorities are authorised by local Act to make bye-laws for the preservation of order and good conduct in certain areas under their control, *e.g.* the sea-shore. Bye-laws made under such powers, or powers given under a general Act such as the P.H.A. Amendment Act, 1907 (*u*), regulating meetings are enforceable if made within the scope of the Act of Parliament conferring the power and not contravening the principles affecting the making and validity of bye-laws (*v*). See titles BYE-LAWS; ESPLANADES, PROMENADES AND BEACHES. [332]

Disorderly Conduct.—Any person who at a lawful public meeting (*n*) acts in a disorderly manner for the purpose of preventing the transaction

(*n*) *Burden v. Rigler*, [1911] 1 K. B. 337; 15 Digest 644, 6358.

(*o*) *Hampstead Garden Suburb Trust, Ltd. v. Denbow* (1913), 77 J. P. 318; Digest (Supp.).

(*p*) It appears to be immaterial that the person requested to leave had paid for admission and not had his money returned, although such person has a legal remedy.

(*q*) *Thomas v. Sawkins*, [1935] 2 K. B. 249.

(*r*) See Report of Departmental Committee on the duties of the police with respect to the preservation of order at public meetings, 1909, where the local police practice in various parts of the country at the date of the report is set out.

(*s*) L.G.A., 1933, ss. 125, 164; 26 Halsbury's Statutes 372, 397.

(*t*) *Ibid.*, s. 159; *ibid.*, 392.

(*u*) S. 82; 13 Halsbury's Statutes 941.

(*v*) See *Slee v. Meadows* (1911), 75 J. P. 246; 38 Digest 161, 77.

of the business for which the meeting is called together is guilty of an offence, and if the offence is committed at a political meeting held in any parliamentary constituency between the issue and return of a writ the offence is made an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 (*w*). Any person inciting another to the offence is guilty of a like offence (*x*). A constable reasonably suspecting any person of committing an offence may, if requested so to do by the chairman of the meeting, require an immediate declaration by such person of his name and address, and refusal or failure to comply or to give correct name and address is punishable by fine and renders the offender liable to arrest without warrant (*b*). [333]

The Public Order Act, 1936 (c).—This Act makes it an offence punishable summarily by imprisonment not exceeding three months or by fine not exceeding £50 or both :

- (1) to wear in any public place (*d*) or at any public meeting uniform signifying association with political objects. A "public meeting" for the purpose of the Act includes any meeting in a public place, and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise, and "meeting" means a meeting held for the discussion of matters of public interest or the expression of views on such matters (*e*) ; or
- (2) to carry while present at a public meeting or on the occasion of any public procession any offensive weapon otherwise than in pursuance of lawful authority (*f*) ; or
- (3) to use threatening, abusive or insulting words or behaviour in any public place or at any public meeting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned (*g*). [334]

The Act prohibits the organisation, training or equipment of persons to usurp the functions of the police or armed forces (*h*), but this does not prevent the organisation of a reasonable number of persons to be employed as stewards to assist in the preservation of order at any public meeting held upon private premises, *i.e.* premises to which the public have access (whether by payment or otherwise) only by permission of the owner, occupier or lessee of the premises, or the instruction in their duties as stewards and equipment with badges (*i*). [335]

Dispersal of Meeting.—When persons meet in a lawful manner for a purpose lawful in itself, the meeting cannot be lawfully dispersed. The remedy lies not in forbidding or dispersing a lawful meeting, but in

(*w*) Public Meeting Act, 1908, s. 1 (1) ; 4 Halsbury's Statutes 757.

(*x*) *Ibid.*, s. 1 (2).

(*b*) Public Order Act, 1936, s. 6 ; 29 Halsbury's Statutes 62.

(*c*) 29 Halsbury's Statutes 57.

(*d*) A public place is any highway, public park, garden, or sea beach and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not ; and includes any open space to which for the time being the public have or are permitted to have access, whether on payment or otherwise (s. 9 ; 29 Halsbury's Statutes 63).

(*e*) Ss. 1 (1), 9 (1). The chief officer of police may, with consent of the Secretary of State, permit the wearing of such uniforms on certain special occasions. Prosecutions under s. 1 require the consent of the A.-G. (s. 1 (2)).

(*f*) S. 4. "In pursuance of lawful authority" means acting in the capacity of a servant of the Crown or either House of Parliament or of any local authority, or as a constable, or as a member of a recognised corps defined in s. 9 of the Act, or as a member of a fire brigade.

(*g*) S. 5.

(*h*) S. 2 (1). Prosecutions require the consent of the A.-G.

(*i*) S. 2 (6).

dispersing those who provoke or intend to provoke a breach of the peace (*k*). If danger arises from the exercise of lawful rights resulting in a breach of the peace the remedy is the presence of a sufficient force to prevent that result, not the legal condemnation of those that exercise those rights (*l*). If, however, it is quite impossible to preserve or restore the peace by any other means than by dispersing the meeting, then persons in authority may call upon the meeting to disperse, and if it does not disperse, it becomes an unlawful assembly (*m*). The use by a speaker of language so provocative or intemperate that a breach of the peace is the natural consequence renders him liable to be bound over even though the language used may not be in itself unlawful (*n*).

Unlawful Assemblies.—An unlawful assembly has been defined as an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose, whether lawful or unlawful, in such a manner as to give ordinarily courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it (*o*). [336]

To take part in an unlawful assembly is a misdemeanor punishable with fine and imprisonment. A meeting originally lawful may become unlawful if a proposal is made at such a meeting to do an act of violence to the disturbance of the public peace and such proposal is acted upon (*p*). [337]

London. Promotion of Bills.—For the promotion, etc., of parliamentary bills by the L.C.C., no meeting of local government electors is necessary (see London Government Act, 1939, sects. 150, 151 and 153 (*q*)). The special power given by sect. 150 of the Act to promote bills for any work for the improvement of the county or public benefit of the inhabitants, or for the provision of parks, pleasure grounds, places of recreation and open spaces, may be exercised without complying with the general procedure contained in sect. 151. As regards metropolitan boroughs, see the London Government Act, 1939, sects. 151 and 152 and Sixth Schedule (*r*). The provisions contained in sect. 152 and the Sixth Schedule with respect to meetings and polls of local government elections to approve the promotion of a bill by a metropolitan borough council are substantially the same as the provisions of sect. 255 and the Ninth Schedule of the L.G.A., 1933 (*s*), which relates to the promotion of bills by councils of boroughs and urban districts outside London. The provisions of the Schedule to the Sunday Entertainments Act, 1932 (*t*), do not apply in London. [338]

Public Meetings.—By the Seditious Meetings Act, 1817, s. 25 (*u*), meetings of more than fifty persons, for the purpose of considering or preparing an address to the Crown, or both or either of the Houses of Parliament, for alteration of matters of Church or State are unlawful assemblies if they take place within a mile of Westminster Hall (except in the parish of St. Paul, Covent Garden) on any day on which either Parliament or the Law Courts are sitting or are about to sit or have been sitting.

(*k*) *Beatty v. Gillbanks* (1882), 9 Q. B. D. 308; 15 Digest 644, 6854.

(*l*) *Per O'BRIEN, J.*, in *R. v. Londonderry J.J.*, 28 L. R. Ir. 440, at pp. 461, 462.

(*m*) Dicey's Law of the Constitution, 7th ed., 273.

(*n*) *Wise v. Dunning*, [1902] 1 K. B. 167; 15 Digest 642, 6829.

(*o*) See Stephen, Digest Criminal Law, 7th ed., 74.

(*p*) *R. v. Graham and Burns*, *supra*, at p. 484.

(*q*) 32 Halsbury's Statutes 330—332.

(*r*) *Ibid.*, 330, 375.

(*s*) 26 Halsbury's Statutes 444, 510.

(*t*) 25 Halsbury's Statutes 926.

(*u*) 4 Halsbury's Statutes 435.

TRADE EFFLUENTS

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See also titles :

LAND DRAINAGE ;
MINES AND MINERALS ;
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SEWAGE DISPOSAL ;
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SEWERS—CONSTRUCTION OF.

DISCHARGE OF TRADE EFFLUENTS INTO SEWERS

Introductory.—In their Second Interim Report (a) issued in January, 1936, the Local Government and Public Health Consolidation Committee stated that the law with regard to the duty of the local authority to receive trade effluents into their sewers was in an unsatisfactory state. It was to be found principally in sects. 15 and 21 of the P.H.A., 1875 (b), which laid down the general duty of a local authority to make and maintain sewers and to allow owners to connect their drains with such sewers, and in sect. 7 of the Rivers Pollution Prevention Act, 1876 (c), which provided in effect that a local authority must give facilities for enabling manufacturers to carry the liquids proceeding from their factories into the authority's sewers, but qualified this obligation by excluding from the right of admission to a sewer "liquid which would be injurious from a sanitary point of view," and also by exempting the authority from any obligation to give facilities where the sewers of such authority are only sufficient for the requirements of their district.

(a) Cmd. 5059 of 1936.

(b) 13 Halsbury's Statutes 632, 634 (repealed).

(c) 20 Halsbury's Statutes 819 (repealed).

The P.H. (Drainage of Trade Premises) Act, 1937 (*d*), now gives a right to occupiers of trade premises to discharge trade effluents into public sewers subject to special restrictions and notwithstanding the provisions of sect. 34 of the P.H.A., 1936 (*e*). Parliament anticipated some of its provisions by repealing sect. 7 of the Rivers Pollution Prevention Act, and reproducing it in an amended form in sects. 26 and 27 of the P.H.A., 1936 (*f*). The provisions of the P.H. (Drainage of Trade Premises) Act, 1937, made unnecessary the continuance of sect. 26 of the Act, and that section is accordingly repealed, whilst the provisions of sect. 27 are modified so far as they apply to trade effluents.

The P.H.A., 1936, and the P.H. (Drainage of Trade Premises) Act, 1937, may be cited together as the P.H.A., 1936 and 1937, and it is in these statutes that the law relating to the discharge of trade effluents is principally contained. [339]

Certain Matters not to be Passed into Public Sewers.—It is an offence to pass into a public sewer (*g*) or drain or sewer draining into a public sewer (a) any matter likely to injure it or interfere with the free flow or to prejudice the treatment and disposal of its contents; or (b) any chemical refuse with steam or liquid of a temperature higher than 110° F., which when so heated is either alone or in combination with the contents of the sewer or drain dangerous or a nuisance or prejudicial to health; or (c) any petroleum spirit or carbide of calcium (*h*).

The penalty for breach is £10 and a daily penalty of £5 (*i*). [340]

The prohibitions under (a) and (b), however, do not apply to any trade effluent which by virtue of the P.H. (Drainage of Trade Premises) Act, 1937 (*k*), may lawfully be discharged into a public sewer. [341]

Right of Owners and Occupiers to Drain into Public Sewers.—It is provided by sect. 34 of the P.H.A., 1936 (*l*), that subject to certain provisions contained in the section, the owner or occupier of any premises or the owner of any private sewer (that is, any sewer which does not come within the classification of "public sewers" as defined by sect. 20 of the Act) (*g*) within the district of a local authority shall be entitled to have his drains or sewer made to communicate with the public sewers and thereby to discharge foul water and surface water from these premises or from that private sewer; but this shall not entitle any person

(a) to discharge directly or indirectly into any public sewer :

(i.) any liquid from a factory (other than domestic sewage or surface or storm water) or any liquid from a manufacturing process ; or

(ii.) any liquid or other matter the discharge of which into public sewers is prohibited by or under statute ; or

(*d*) 30 Halsbury's Statutes 695.

(*e*) *Ibid.*, 346, 347.

(*f*) 29 Halsbury's Statutes 349.

(*g*) As to what is a public sewer, see P.H.A., 1936, s. 20 (2) ; 29 Halsbury's Statutes 341.

(*h*) For the test prescribed by the Petroleum (Consolidation) Act, 1928, see 18 Halsbury's Statutes 1188, 1192.

(*i*) P.H.A., 1936, s. 27 ; 29 Halsbury's Statutes 347.

(*k*) See *post*.

(*l*) 29 Halsbury's Statutes 349.

- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly :
 - (i.) foul water into a sewer provided for surface water ; or
 - (ii.) except with the approval of the local authority, surface water into a sewer provided for foul water ; or
- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

The matters referred to in (a) (i.) and (ii.) will come within the provisions of the P.H. (Drainage of Trade Premises) Act, 1937, which provides for their discharge into public sewers subject to certain restrictions and conditions. [342]

P.H. (Drainage of Trade Premises) Act, 1937 (m).—In this Act, “trade effluent” means any liquid, either with or without particles of matter in suspension therein, which is wholly or in part produced in the course of any trade or industry carried on at trade premises, and in relation to any trade premises, means any such liquid as aforesaid which is so produced in the course of any trade or industry carried on in those premises, but does not include any domestic sewage ; “trade premises” means any premises used or intended to be used for carrying on any trade or industry (n).

The Act requires persons desiring to discharge trade effluents to serve on the local authority a trade effluent notice, and the local authority may impose conditions subject to a right of appeal to the Minister (o). Local authorities are empowered and may be compelled to make bye-laws (p). [343]

Right to Discharge Trade Effluents into Public Sewers.—Subject to the provisions of the Act and of any bye-laws made under it, the occupier of any trade premises may, with the consent of the local authority, and, so far as is permitted by any such bye-laws, without such consent, discharge into any public sewer of the local authority any trade effluent from those premises (q). The provisions of paragraphs (a) and (b) of sect. 27 of the P.H.A., 1936 (r), relating to injurious matter and chemical refuse do not apply in relation to trade effluent which may be lawfully discharged into sewers under the Act of 1937, and the provisions of sect. 34 (2), (3), (4), (5) of the Act of 1936 (s) which regulates the making of connections with public sewers apply in relation to the lawful discharge of trade effluent into public sewers under the Act of 1937 as they do in relation to the discharge of foul and surface water under sect. 34 of the 1936 Act (s). [344]

Special Restrictions upon Discharge of Trade Effluents.—Sect. 2 of the Act of 1937 (t) provides that no trade effluent may be discharged from any trade premises into a public sewer of a local authority otherwise than in accordance with a written trade effluent notice served on the local authority by the owner or occupier of the premises setting out the nature or composition of the effluent, the maximum quantity of the proposed daily discharge and highest rate at which it is proposed to discharge. No effluent may be discharged until the expiration of two months (or such less time as may be agreed by the local authority) from the date of service of the notice. This period is called “the

(m) 30 Halsbury's Statutes 695. The Act is fully annotated in Lumley's Public Health, 11th ed., Vol. II., pp. 1459 *et seq.*

(n) S. 14 ; *ibid.*, 706.

(o) S. 2 ; *ibid.*, 696.

(p) S. 5 ; *ibid.*, 700.

(q) S. 1 ; *ibid.*, 696.

(r) 29 Halsbury's Statutes 347.

(s) *Ibid.*, 349.

(t) 30 Halsbury's Statutes 696.

initial period." So far as discharge would not be lawful without consent, the notice is to be deemed to be an application for that consent. The local authority may at any time within the initial period direct that no trade effluent shall be discharged until a specified date after the end of the initial period, and in a case requiring consent the local authority may give consent either unconditionally or subject to such conditions as they may think fit to impose with respect to (a) the sewer or sewers into which the effluent may be discharged, (b) the nature or composition of the effluent, (c) the maximum quantity which may be discharged in any one day, either generally or into a particular sewer, (d) the highest rate at which it may be discharged, either generally or into a particular sewer, and (e) any other matter with respect to which bye-laws may be made under the Act, but a condition is not effective if inconsistent with any bye-laws in force for the time being. The local authority must forward a copy of the trade effluent notice to any interested party and cannot take further action without the approval of such body or bodies.

The discharge of any trade effluent without any necessary consent, or in contravention of the section or of any direction or condition imposed under the section, renders the occupier liable to a fine not exceeding fifty pounds and a daily fine of twenty pounds for an offence continuing after conviction (*u*). [345]

Appeals to Minister.—Any person aggrieved by a direction of the local authority or their refusal or failure to consent or a condition attached to a consent may appeal to the Minister of Health, who may annul or modify any direction or give consent either conditionally or unconditionally or substitute a less stringent condition or may dismiss the appeal (his decision being final), or he may at any stage (and must, if directed) state a special case to the High Court on any question of law (*a*). [346]

Exemptions.—Consent is not necessary in case of the discharge into a sewer of effluent of the same nature or composition as that already being lawfully discharged from the same premises into the same sewer at some time within the period of one year ending on March 3, 1937, if and so long as the quantity discharged in one day does not exceed the maximum quantity of the discharge on any one day during the same period, and the rate of discharge is not higher than the highest rate of discharge during that period (*b*). Laundry effluent is also exempt (*c*). Disputes as to what was the nature of composition of effluent or the quantity or rate of discharge during the period are to be referred to the final determination of the M. of H. (*d*). [347]

Bye-laws.—The local authority may (and, if required by the M. of H. must) make "trade effluent bye-laws" (*e*), providing for all or any of the following matters: (*a*) the period of the day in which the sewers may be used, (*b*) the exclusion of condensing water, (*c*) the elimination

(*u*) P.H. (Drainage of Trade Premises) Act, 1937, ss. 2 (5), 11; 30 Halsbury's Statutes 698, 705.

(*a*) *Ibid.*, s. 3; *ibid.*, 698.

(*b*) *Ibid.*, s. 4 (1), (3); *ibid.* A similar exemption is extended in the case of a sewer closed under s. 42 of the P.H.A., 1936, s. 4 (2); 29 Halsbury's Statutes 325.

(*c*) P.H. (Drainage of Trade Premises) Act, 1937, s. 4 (4); 30 Halsbury's Statutes 700.

(*d*) *Ibid.*, s. 4 (5); *ibid.*, 700. He may (and, if directed, must) state a case on any question of law, for the opinion of the High Court.

(*e*) *Ibid.*, s. 5. In making the bye-laws the procedure prescribed by the schedule to this Act as well as that set out in s. 250 of the L.G.A., 1933; 26 Halsbury's Statutes 318, must be observed.

of injurious or obstructive matter from effluents, (d) the quantity and rate of discharge, (e) the temperature of the effluent at the time of discharge, (f) payment by occupiers for expenses incurred by the authority in the reception and disposal of the effluent, (g) and (h) the provision and maintenance of inspection chambers, manholes, meters and testing of meters. Bye-laws providing for matters (a) and (d) may make different provisions in relation to different descriptions of trade premises, and in relation to different parts of the district. Nothing in the bye-laws providing for matters other than (e), (g) and (h) applies to trade effluents to the discharge of which the consent of the local authority is not necessary (f), and nothing in them shall enable a local authority to make any charge for reception of any quantity of effluent discharged from any particular trade premises, being a quantity which, by virtue of sect. 4 could lawfully be discharged into the sewer without consent. Bye-laws are not to be effective until confirmed by the Minister, who shall not entertain any application for such confirmation unless he is satisfied that the requirements contained in the schedule of the Act have been complied with. Contravention and non-compliance with any bye-law is an offence under the Act. Provision is made for the relaxation of bye-laws which would operate unreasonably in any particular case. [348]

The M. of H. may make bye-laws on default by a local authority and revoke any unreasonable bye-laws, substituting others therefor (g). [349]

Model bye-laws have been issued by the Minister of Health dealing with exclusion of condensing waters, elimination of certain constituents, quantity of effluent which may be discharged without consent, temperature, acidity or alkalinity, payments, inspection chambers, manholes and meters (h). [350]

Model bye-laws have not been provided for use with regard to periods during which trade effluent may be discharged from any trade premises into the sewer; but proposals for such bye-laws may be submitted if a local authority thinks this necessary. [351]

The maximum amount of trade effluent which may be discharged from particular trade premises in any one day and the maximum rate of discharge may be governed under sects. 2 and 3 of the Act, except in so far as the quantity and rate fall within the limits set out in the bye-laws, and bye-laws as to the periods of discharge will be required only where it is proposed to allow large quantities over short periods from two or more premises, and it is desired, with a view to regulating the rate of flow and strength of sewage reaching the sewage disposal works, to secure that trade effluents are discharged at different times. Such regulation may also be necessary to prevent the discharge of effluents likely to be harmful unless diluted at times of minimum flow of the ordinary sewage, e.g. at night. [352]

The local authority is to keep a register of persons who have requested to receive a notice required to be published by the local authority in connection with the making of trade effluents bye-laws or the confirmation of such bye-laws (i). The local authority is to give notice of any proposed relaxation or dispensation to any interested bodies and to persons whose names appear on the register, and to such other persons as the Minister may direct, and the Minister shall not give his

(f) P.H. (Drainage of Trade Premises) Act, 1937, s. 4; 30 Halsbury's Statutes 698.

(g) *Ibid.*, s. 6 (1); *ibid.*, 702.

(h) Model Bye-laws, Series XXVIII.

(i) Schedule to the Act, para. 2; 30 Halsbury's Statutes 707.

consent to any relaxation without considering any objections received by him from such bodies or persons. Trade effluent bye-laws are to cease to have effect on the expiration of ten years from the date on which they are made, unless extended by an order of the Minister (*k*). [353]

Agreements between Local Authorities and Traders or other Local Authorities.—Subject to the provisions of the Act and of any bye-laws thereunder a local authority may enter into an agreement with an owner or occupier of trade premises for the reception and disposal by the local authority of any trade effluent, and the agreement may provide for the construction by the local authority of necessary works and for the repayment by the owner or occupier for the whole or part of the expense, but such an agreement shall not take effect without the approval of any interested body, or the dispensation by the Minister of such approval (*l*).

A local authority may also enter into an agreement with an owner or occupier of trade premises, whereby the authority upon terms undertake to remove and dispose of substances produced in the course of treating any trade effluent (*m*).

A copy of every agreement entered into by a local authority, certified by the clerk to the authority, is to be kept available at the offices of the authority for inspection and copy upon payment of the fee of sixpence for each inspection (*n*). [354]

Nothing in the Act or bye-laws shall affect any agreement made before the coming into operation of the Act (July 1, 1938) (*o*), or of the bye-laws as the case may be (*p*). If on the application of any party to an agreement made before the passing of the Act (July 1, 1937) between sewerage authorities, whereby a sewer of one authority may communicate with a sewer or discharge into the sewage disposal works of another authority, the Minister is satisfied that owing to circumstances likely to arise by reason of the Act, the agreement ought to be cancelled or varied, he may direct the cancellation or variation of such agreement (*q*). [355]

Execution of Works by Local Authorities for Traders.—Where, in order to comply with trade effluent bye-laws it is necessary for any works to be constructed by any person, the local authority may construct those works at the request and cost of that person, and arrangements may be made for the payment of such cost with interest by instalments (*r*). [356]

Production of Plans and Furnishing of Information to Local Authorities.—The owner or occupier of any land on or under which is situate any sewer, drain, etc., used or intended to be used for discharging trade effluent into the sewer of a local authority, must produce to the local authority when requested all such plans of such sewer, drain, etc., which he possesses, or can without expense obtain, and allow copies to be made by the authority, and also furnish all such information as he can be reasonably expected to supply (*s*).

The owner or occupier of any trade premises from which any trade effluent was at any time during the period of one year ending March 3, 1937, discharged into a sewer, must on request in writing by the local authority furnish them with such information specified in the request

(*k*) P.H. (Drainage of Trade Premises) Act, 1937, s. 5 (6); 30 Halsbury's Statutes 702.

(*l*) *Ibid.*, s. 7 (1); *ibid.*, 702.

(*n*) *Ibid.*, s. 7 (8); *ibid.*

(*p*) *Ibid.*, s. 7 (4); *ibid.*, 703.

(*r*) *Ibid.*, s. 8; *ibid.*

(*m*) *Ibid.*, s. 7 (2); *ibid.*, 703.

(*o*) *Ibid.*, s. 15 (3); *ibid.*, 707.

(*q*) *Ibid.*, s. 7 (5); *ibid.*

(*s*) *Ibid.*, s. 9 (1); *ibid.*, 704.

as can reasonably be expected as to the nature or composition and the volume and the rate of discharge of the trade effluent (*t*). Failure to comply constitutes an offence rendering the offender liable to a fine of five pounds and a daily fine of forty shillings for an offence continuing after conviction (*u*). [357]

Power to Take Samples of Trade Effluents.—Any officer of a local authority may enter premises and take samples of trade effluent, and on compliance with the provisions of the Act the analysis of the sample taken by an officer is admissible as evidence in any legal proceedings under the Act (*a*). [358]

Penalties.—A person guilty of an offence for which no penalty is specially provided is liable to a fine not exceeding fifty pounds and to a further fine of not exceeding twenty pounds for every day on which the offence continues after conviction (*b*). [359]

Adaptation of Local Acts.—On application by any sewerage authority or by the owner or occupier of trade premises the Minister may by order adapt the provisions of any local statutes relating to the sewerage authority in order to bring such provisions into conformity with the provisions of the Act (*c*). Where a sewerage system or sewage disposal system is provided by a joint sewerage authority, the Minister may order that specified functions of a local authority under the Act shall be discharged by that joint sewerage authority as well as, or instead of by, the local authority (*d*). Orders must be published in the *London Gazette*, opportunity being given for any objection before confirmation by Parliament (*e*). Any power to make an order shall be construed as including a power exercisable in like manner, subject to like conditions, to vary and revoke the order (*f*). [360]

Saving of Rights in Respect of Water.—Nothing in the Act is to affect any right with respect to water in a river, stream or watercourse, or authorise any infringement of such a right (*g*). [361]

Local Authority not to Create any Nuisance.—A local authority is to discharge its functions under the P.H.A., 1936, with regard to the sewerage of their district and the effectual dealing with the sewage in such a way as not to be a nuisance (*h*). This matter is more fully dealt with in title SEWAGE DISPOSAL. [362]

River Pollution by Trade Effluents.—It is an offence (*i*) for any person to cause to fall or flow or knowingly permit to fall or flow or to be carried into any stream any poisonous, noxious or polluting liquid proceeding from any factory or manufacturing process. Where, however, such liquid is carried into the stream along any channel used before August 15, 1876, or any new channel substituted therefor and

(*t*) P.H. (Drainage of Trade Premises) Act, 1937, s. 9 (2); 30 Halsbury's Statutes 704.

(*u*) *Ibid.*, s. 9 (3); *ibid.*

(*a*) *Ibid.*, s. 10; *ibid.* Obstruction of such officer in the exercise of this duty is an offence under P.H.A., 1936, s. 288; 29 Halsbury's Statutes 509.

(*b*) *Ibid.*, s. 11; *ibid.*, 705.

(*c*) *Ibid.*, s. 12 (1); *ibid.*

(*d*) *Ibid.*, s. 12 (2); *ibid.*

(*e*) *Ibid.*, s. 12 (3); *ibid.*

(*f*) *Ibid.*, s. 12 (4); *ibid.*

(*g*) *Ibid.*, s. 13; *ibid.*, 706.

(*h*) P.H.A., 1936, s. 31; 29 Halsbury's Statutes 348.

(*i*) Even though as between the parties a prescriptive right to pollute is proved (*Butterworth v. West Riding of Yorkshire Rivers Board*, [1909] A. C. 45; 44 Digest 42, 301).

having its outfall at the same spot, no offence shall be deemed to have been committed if it is shown that the best practicable and reasonably available means have been used to render harmless the liquid carried into the stream (*k*). [363]

Proceedings may be taken against a sanitary authority under this section (*l*). [364]

Inspectors of the M. of H. may grant certificates that the means used to render harmless the liquid are the best or only practicable and available means under the circumstances of the particular case, and these certificates are conclusive evidence of the fact and continue in force for a period to be named therein, not exceeding two years, at the expiration of which time they may be renewed (*m*). [365]

Sewage to be Purified before Discharge into Streams.—A local authority may not construct or use any public or other sewer, drain or outfall for conveying foul water into any natural or artificial stream, canal, lake, etc., until the water has been so treated as not to affect prejudicially the purity and quality of the water in the stream, etc. (*n*). [366]

Effluent from Mines.—The drainage of mines seems to affect local authorities chiefly as regards disposal of the effluent, in connection with their powers and duties under the P.H.As., and under the Land Drainage Act, 1930, where they are the drainage authority under that Act. These are dealt with under title MINES AND MINERALS, Vol. IX., p. 201. [367]

Position under the Land Drainage Act, 1930.—Under the Land Drainage Act, 1930, county councils and county borough councils have in certain cases the powers of catchment boards and of drainage boards (*o*), so that if the arrangements for the drainage of trade premises or the dealing with trade effluents requires the placing of any obstruction interfering with the flow of any watercourse, the leave of such council is necessary, and if any obstruction existing before the passing of the Act has to be removed for the purposes of the Act the local authority may remove it, paying full compensation therefor (*p*).

A drainage board may make bye-laws for (*inter alia*) preventing the obstructions of watercourse by liquid or solid matter (*q*). See title DRAINAGE BOARDS. [368]

Alkali, etc., Works Regulation Act, 1906.—Every work in which acid is produced or used must be carried on in such a way that the acid does not come into contact with alkali waste or with drainage therefrom so as to cause a nuisance. The penalty for a first offence is a fine of fifty pounds and for subsequent offences one hundred pounds and a daily penalty not exceeding five pounds for every day such subsequent

(*k*) Rivers Pollution Prevention Act, 1876, s. 4; 20 Halsbury's Statutes 317.

(*l*) *West Riding of Yorkshire Rivers Board v. Linthwaite U.D.C.*, [1915] 2 K. B. 436; 44 Digest 43, 303.

(*m*) Rivers Pollution Prevention Act, 1876, s. 12; 20 Halsbury's Statutes 322. As to legal proceedings, see s. 10 of the Act, *ibid.*, 320.

(*n*) P.H.A., 1936, s. 30; 29 Halsbury's Statutes 348. See hereon the valuable notes in Lumley's Public Health, 11th ed., pp. 87 *et seq.* For further provisions as to pollution of rivers and streams see title POLLUTION OF RIVERS.

(*o*) S. 59; 23 Halsbury's Statutes 565.

(*p*) S. 44; *ibid.*, 561.

(*q*) S. 47; *ibid.*, 563.

offence has continued (r). A sanitary authority, at the request of the owner of such works and at his expense, may make a drain to carry off the acid to the sea or into any river or watercourse into which such acid may be carried without contravening the Rivers Pollution Prevention Act, 1876 (s). [369]

Pollution by Gas Washings.—Gas undertakers allowing washings produced in the making or supplying of gas to flow into streams (whether belonging to a waterworks undertaking or not), reservoirs, aqueducts or waterworks and fouling the water, are liable to a penalty of two hundred pounds (t). A person fouling streams and watercourses in manner indicated is liable to be restrained by injunction (u). [370]

Fouling of Waterworks by Engine Water.—It is an offence to cause water of any steam engine boiler or other filthy water to foul any stream, etc., belonging to waterworks undertakers (a). [371]

London.—Sects. 56 to 59 of the P.H. (London) Act, 1936 (b), contain provisions prohibiting the discharge of solid and liquid offensive matter into the L.C.C.'s sewers including chemical and trade refuse and heated liquids over 110° F. See title PROTECTION OF SEWERS. Sect. 60 (c) contains a saving as to heated water from the railways of the London Passenger Transport Board; sects. 56 to 59 are not to apply if provision is made to the satisfaction of the M. of T. for securing that the temperature of the water does not exceed 110° F. at such distance from the point of discharge into the sewer, not being more than 50 feet, as may be agreed; the L.C.C. must afford facilities for works or appliances for the purpose and must construct and maintain the works at the cost of the board; the board must provide the L.C.C. with facilities for inspection of the board's railway premises. [372]

The sections above mentioned do not prohibit the discharge of liquid used for brewery washings of less than 100° F. in temperature and containing less than 3 per cent. solid refuse (sect. 61) (d). The discharge of petroleum, petroleum spirit or carbide of calcium into sewers is forbidden (sect. 62) (e). Sect. 80 (f) expressly saves sect. 7 of the Rivers Pollution Prevention Act, 1876 (g). Sect. 101 (h) provides a penalty for causing water to be corrupted by gas washings or other substances produced in making or supplying gas.

Under sect. 139 (i) it is the duty of sanitary authorities (City corporation, metropolitan borough councils, etc.) to make and enforce bye-laws for the prevention of nuisances arising from any offensive

(r) Alkali, etc., Works Regulation Act, 1906, s. 3; 13 Halsbury's Statutes 895. As to the recovery of the fine, see s. 17.

(s) *Ibid.*, s. 3 (2).

(t) The Gasworks Clauses Act, 1847, ss. 21—23; 8 Halsbury's Statutes 1124, 1223; Waterworks Clauses Act, 1847, ss. 62, 63; 20 Halsbury's Statutes 207; see also Waterworks Clauses Act, 1863, s. 16; 20 Halsbury's Statutes 224, and P.H.A., 1875, s. 68; 13 Halsbury's Statutes 653.

(u) See *Batcheller v. Tunbridge Wells Gas Co.* (1901), 65 J. P. 680; 25 Digest 487, 100.

(a) Waterworks Clauses Act, 1847, s. 61; 20 Halsbury's Statutes 206.

(b) 30 Halsbury's Statutes 475—477.

(c) *Ibid.*, 477.

(d) *Ibid.*, 478.

(e) *Ibid.*, 479.

(f) *Ibid.*, 487.

(g) 20 Halsbury's Statutes 319.

(h) 30 Halsbury's Statutes 499.

(i) *Ibid.*, 522.

matter running out of any manufactory, brewery, slaughter-house, knacker's yard, butcher's or fishmonger's shop or dunghill into any uncovered place, fenced or not. [373]

The P.H. (Drainage of Trade Premises) Act, 1937, does not extend to London or to the area which at the passing of the Act drained into the sewers of London local authorities. See sect. 15 (k). [374]

(k) 30 Halsbury's Statutes 706.

TRADE REFUSE

See REFUSE.

TRADING REVENUE AND FINANCE

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See also titles :

AERODROMES ;
ELECTRICITY SUPPLY ;
FERRIES ;
FINANCE ;
GAS ;
HARBOURS ;
HIRE-PURCHASE :

LIGHT RAILWAYS ;
MARKETS AND FAIRS ;
MUNICIPAL TRADING ;
OMNIBUSES OF LOCAL AUTHORITIES ;
TRAMWAYS ;
WATER SUPPLY ;
WATERWORKS.

[The accounts of trading undertakings are not dealt with in this title. Reference should be made to the comprehensive title ACCOUNTS OF LOCAL AUTHORITIES, and to the titles quoted above. Borrowing in connection with trading undertakings, which is also excluded from this title, is dealt with under that title.]

Introductory.—According to the Summary of Local Government Financial Statistics for England and Wales relating to the year 1936-7, which was presented to Parliament by the M. of H. (a) in June, 1939, the expenditure on revenue account for all local authorities in respect of trading services amounted in that year to some £131 millions; this amount included £1·6 millions transferred in aid of rates. The aggregate income exceeded £182 millions, which included £2·5 millions transferred from rate fund accounts towards deficiencies.

(a) Pursuant to L.G.A., 1933, s. 245 ; 26 Halsbury's Statutes 438.

Out of a total net outstanding debt on all services of £1,399 millions at March 31, 1937, the net outstanding debt on trading services amounted to £449 millions. The trading services classified in the summary are: water supply; gas supply; electricity supply; transport (tramways, etc.); ferries; markets; cemeteries; harbours, docks, piers and canals; and miscellaneous. (The miscellaneous group includes other services which are conducted upon a commercial basis, *e.g.* winter gardens, beach undertakings, etc.)

Of these services, gas supply, electricity supply, transport and markets accounted for an aggregate transfer in aid of rates much in excess of the total of the amounts transferred from rates to meet deficiencies on those services. Of the remaining services, water supply (£1.2 millions) and cemeteries (£0.5 million) largely accounted for the £2.5 millions transferred from rates to meet deficiencies, and contributed relatively small sums in aid of rates. The amounts of profits transferred in aid of rates do not, of course, afford a reliable indication of the extent to which profits are made. Nor is it the case that one particular trading service is invariably profitable, while another is invariably rate-aided. Some of the important trading services require support from the rates in some districts, and in others produce profits in aid of rates; and there are districts where undertakings require aid from rates in some years and give aid to rates in other years. It is true, however, that while the trading services of local authorities are in general conducted on a profitable basis, exceptions are found, principally in the case of water supply and cemetery undertakings.

Local authorities are not under any statutory obligation as to the conduct of their trading services on a basis either of profit or of loss; but in general practice, the modern aim is to avoid recourse to rate-aid, while limiting the amount of profits transferred in relief of rates. As will be seen, restrictions on the amount of profits that may be applied in aid of rates are found in the provisions of both general and local legislation.

[375]

Trading Revenues.—The revenues of trading undertakings are derived for the most part from charges made to consumers and users for the supply or service provided. Other revenues accrue from the sale of by-products of the industry (*e.g.* coke and other residuals in the case of a gas supply undertaking); from the letting of properties owned in connection with the undertaking (*e.g.* sporting rights in connection with a water supply undertaking); from rents of meters; and from hirers or hire-purchasers of apparatus incidental to the product supplied (*e.g.* gas and electric cookers, etc.). See title **HIRE-PURCHASE**.

The charges made for the supply or service provided depend usually upon some statutory authority, either of the general Act governing the undertaking (*e.g.* water supply under the P.H.A., 1936) (*b*), or of the special Act or order empowering the local authority to supply, *e.g.* gas or electricity. Where maximum prices are so prescribed, they may be subject to periodical revision by the central authority, possibly on representation by consumers. [376]

Maximum Charges.—The following brief notes on tariffs and charges in respect of the principal trading services should be supplemented by reference to the subject titles quoted in the head-note above, and to the title **MUNICIPAL UNDERTAKINGS**—note on Charging Powers.

(1) *Water Supply*.—A local authority supplying water under the P.H.A., 1936, to any premises may charge in respect of such supply a water rate to be assessed on the net annual value of the premises; and they may also enter into agreements for supplying water at agreed rents (c). The M. of H. is given certain powers to order that reasonable and adequate rates be levied (d). Where water is supplied by meter, the M. of H. may, on the application of the local authority, fix maximum and minimum charges per 1,000 gallons (e). Where charging powers are obtained by local Act, it is usual to find that maximum rates are prescribed both for unmeasured and measured supplies, the latter including supplies for special purposes such as garages, stables, water-softening apparatus, trade and public institutions. It is generally provided also that the M. of H. may, on representation by the local authority or by a specified number of consumers, vary the maximum rates or charges from time to time; and that in the absence of exceptional circumstances such variation may not take place at less intervals than three or five years. [377]

(2) *Gas Supply*.—A maximum or standard price is generally fixed by the local Act or order (made by the Board of Trade) authorising the local authority to supply gas. The Gas Regulation Act, 1920 (f), provided for the adoption of the thermal system of charge, and gave power to the Board of Trade to make orders substituting a maximum or standard price per therm for a maximum or standard price per 1,000 cubic feet. The Board of Trade may also make orders amending a charges order, on the application of the local authority or of twenty consumers. [378]

(3) *Electricity Supply*.—The maximum prices at which electricity may be sold are defined by the order granted to the local authority by the Electricity Commissioners, with the approval of the M. of T. Under sect. 22 (2) of the Electricity (Supply) Act, 1922 (g), the M. of T., upon the representation of the local authority or of a representative number of consumers, may make at recurring triennial periods a special order varying the maximum prices and methods of charge. [379]

(4) *Transport*.—The local authority under the Tramways Act, 1870 (h), is authorised by the local Act or order governing the undertaking to charge reasonable tolls for the use of their cars, subject to consent of the M. of T. Fares and charges in respect of the use of motor omnibuses and trolley-vehicles are fixed at the discretion of the local authority, subject to certain controlling powers which are exercisable by the Traffic Commissioners under the Road Traffic Act, 1930 (i). The Traffic Commissioners may fix minimum and maximum fares, and revise them from time to time, or they may exercise their control by attaching to a road service licence such conditions as they may think fit to secure, *inter alia*, that the fares shall not be unreasonable. [380]

(5) *Ferries*.—Under the Ferries (Acquisition by Local Authorities) Act, 1919 (k), a county or borough or district council may, with consent of the M. of T., acquire by agreement and work an existing ferry; and

(c) S. 126; 29 Halsbury's Statutes 415.

(d) But a local authority need not charge a water rate sufficient to cover all their expenses of obtaining and supplying water (*Horn v. Sleaford R.D.C.*, [1898] 2 Q. B. 358; 62 J. P. 502; 48 Digest 1065, 48).

(e) S. 127; 29 Halsbury's Statutes 415.

(f) 8 Halsbury's Statutes 1278.

(g) 7 Halsbury's Statutes 789.

(h) 20 Halsbury's Statutes 6.

(i) 23 Halsbury's Statutes 607.

(k) 8 Halsbury's Statutes 660.

the tolls must be approved by the Minister. Where a local authority are authorised by local Act to establish a new ferry, the tolls, rates and charges must be approved by him. [381]

(6) *Markets*.—Where a local authority provide markets under the provisions of Part V. of the Food and Drugs Act, 1938 (*l*), they may make bye-laws with respect to stallages, rents and tolls, subject to the approval of the M. of H. See title TOLLS AND STALLAGES. [382]

(7) *Cemeteries and Burial Grounds*.—Under the Burial Acts, 1852–1906 (*m*), the table of fees for interments, etc., requires the approval of the M. of H. The table of fees for services rendered by ministers of religion must be approved by the Secretary of State. Fees charged for cremation require the approval of the M. of H. (*n*). [383]

(8) *Harbours, Docks and Piers*.—Maximum dues and charges are usually prescribed by the special Act embodying the provisions of the Harbours, Docks and Piers Clauses Act, 1847 (*o*). These statutory rates may be increased by order of the M. of T., on the application of the local authority made under the provisions of the Harbours, Docks and Piers (Temporary Increase of Charges) Act, 1920 (*p*). [384]

Application of Revenue.—The application of the revenue of a trading undertaking is governed by the regulations contained in the Act or order under which the undertaking is established and maintained. These regulations usually prescribe the limited purposes to which the revenue of the undertaking may be applied, and define the manner in which any surplus revenue is to be disposed of. It is usual to find that these purposes comprise (1) working and maintenance expenses; (2) interest on loans; (3) instalments of loan repayment or sinking fund contributions; (4) other expenses properly chargeable to revenue; (5) contribution to reserve fund. (See *post*.)

Modern clauses in local Acts usually contain power in addition to apply trading revenues by way of additional loan repayments and in the construction, renewal, extension and improvement of works for the purposes of the undertaking. In the case of electricity undertakings, the consent of the Electricity Commissioners is required where it is proposed to apply any part of the surplus revenues to meet capital expenditure.

It is almost invariably provided that the *whole* of the revenue of a trading undertaking must be appropriated in each year and by general implication no “free” surplus may be carried forward. Unless the surplus be applied to one or more of the special purposes mentioned above, then, except to the extent to which all or any portion of the surplus is transferred in aid of rates (see *post*), it must be applied in the reduction of charges. But see “Working Capital,” *post*. [385]

It should be mentioned that in accordance with the provisions of Part VIII. of the L.G.A., 1933 (*q*), all the receipts (including the receipts of trading undertakings) of the council of a borough, urban district or rural district must be carried to and form part of the general rate fund, and all the liabilities of the council must be discharged out of that fund. Thus the revenues of a trading undertaking form an integral part of the general rate fund; but nothing in Part VIII. of the L.G.A., 1933, can be deemed to require or authorise a local authority to apply or

(*l*) 31 Halsbury's Statutes 252.

(*m*) 2 Halsbury's Statutes 184–254.

(*n*) Cremation Act, 1902, s. 9; 2 Halsbury's Statutes 283.

(*o*) 18 Halsbury's Statutes 48.

(*p*) *Ibid.*, 589.

(*q*) 26 Halsbury's Statutes 404.

dispose of the surplus revenue arising from any of their undertakings otherwise than in accordance with the provisions of the Act or order relating thereto (r).

On somewhat similar lines, provisions of local legislation—notably the “Chesterfield clauses” of 1923 and the “Brighton clauses” of 1931—have aimed to secure a comprehensive merger of the accounts of all trading undertakings within the general rate fund. These provisions have been designed with the view of avoiding the restriction of “set-off” of the profits of the local authority in determining their liability to income tax; they are more fully described in the title **INCOME TAX**—“Private Legislation and the Right of Set-off.” [386]

Transfers in Aid of Rates.—An important incident in the conduct of trading undertakings and services by local authorities is the appropriation of profits in relief of rates. Practice in this respect is not marked by consistency. In some areas the trading departments are expected each year to provide contributions from their profits in aid of rates, while in others no such transfers are made, all surplus profits being wholly applied for the benefit of the undertaking. Between these extremes are found local authorities which make only special or occasional transfers of profits from one or more of their undertakings, or which regularly appropriate part of the profits of one or some of their undertakings only.

On the one hand it is contended that the ratepayers are entitled to benefit by transfer of profits because they provide the real security upon which the undertaking is founded; that they would be charged with any losses which could not be met from trading reserves; and that they are entitled to some reward for the efficiency benefits which accrue to the undertaking (e.g. from the operation of a consolidated loans fund) on account of its municipal ownership. It is argued that low rates are of greater attraction to new industries and new residents than low service charges; and of health resorts in particular it is claimed that equity and common-sense support the application of surplus trading profits in the provision and maintenance of the unproductive attractions furnished by such local authorities.

It is maintained on the other hand that the appropriation of trading profits represents an inequitable form of taxation, and contravenes the basic principle of municipal trading, this being held to be the provision of maximum utility at minimum price. It may, it is said, weaken the reserves of the undertakings, and it also falsifies comparisons of rate poundages levied in different areas. [387]

Without entering further into the merits of the policy of transferring profits in relief of rates, it may be sufficient to observe that the attitude of Parliament in this matter has changed considerably during the past thirty years, in the direction of limiting the amount so transferred.

A notable step was taken in the Electricity (Supply) Act, 1926 (s), which limits the amount of electricity profits which may be transferred in aid of rate in any year to a sum not exceeding $1\frac{1}{2}$ per cent. of the outstanding debt on the undertaking; and provides that no transfer may be made unless the reserve fund exceeds 5 per cent. of the aggregate

(r) L.G.A., 1933, s. 194; 26 Halsbury's Statutes 412.

(s) 7 Halsbury's Statutes 792. Where the “Brighton clauses” (*supra*) apply the provisions of the Electricity (Supply) Act, 1926, referred to, are excluded, their restrictive object being attained in another way, namely, by imposing upon the undertakers obligations to reduce their charges in the subsequent year.

capital expenditure on the undertaking. Somewhat similar restrictions have been included in local legislation dealing with other types of undertaking, qualified in some cases by a power to recoup the amounts of deficiencies which in past years have been met out of rates. [388]

Trading Deficiencies.—When the revenue of the year is insufficient to meet the expenditure of the year, the resultant deficiency must be dealt with in one of two ways: it must be charged to reserve fund (see *post*) or to general rate fund, *i.e.* met out of rates. There is no authority under which a deficiency may be carried forward, to be recouped out of the profits of the succeeding year, although in practice this is frequently done. Sometimes a deficiency on one undertaking is made good by transfer of surplus profits of another undertaking. Indirectly this amounts to a charge to rates, which are correspondingly aided by the transfer of profits from the second undertaking, such transfer being subject, of course, to any statutory limitations which may apply (*e.g.* those of the Electricity (Supply) Act, 1926). (See *ante*). [389]

A deficiency on a water supply undertaking owned by a R.D.C. may be charged as special expenses on the contributory place or parish supplied (*t*), or, at the option of the council, it may be charged as general expenses over the whole of the area (*a*). [390]

Reserve and Renewals Funds.—The general statutory provisions relating to trading undertakings do not consistently authorise the creation of reserve funds in connection with the undertakings. In respect of electricity supply undertakings the Electric Lighting (Clauses) Act, 1899 (*b*) (as amended by the Electricity (Supply) Act, 1926) (*c*), confers discretionary powers for the establishment of reserve funds, which are limited in amount to a maximum of 10 per cent. of the capital expenditure of the undertaking. [391]

The special Act or order authorising the establishment or acquisition of the undertaking almost invariably gives power, however, for the creation of a reserve fund. The maximum amount to which such a fund may be accumulated is usually expressed as a percentage (*e.g.* 10 per cent.) of the aggregate capital expenditure of the undertaking, although sometimes it is defined as a sum certain. The fund is created by means of contributions made from surplus profits, and in some cases the annual contribution is limited, *e.g.* to 1 per cent. of the aggregate capital expenditure. As a rule the moneys of any reserve fund must be invested in statutory securities, the interest on the investments being credited to the reserve fund until such time as it reaches the maximum amount prescribed; thereafter the income of the reserve fund becomes available for the general purposes of the undertaking. [392]

General statutory provisions permit the application of moneys of a reserve fund to meet any deficiency in the income of the undertaking, or to meet any extraordinary claim or demand at any time arising against the local authority in respect of the undertaking. In many cases, however, the general provisions have been varied and extended by local Act provisions; in particular, the notable omission from water supply legislation of a general power to provide a reserve fund in connection with a water supply undertaking has been commonly

(i) P.H.A., 1936, s. 308 (1); 29 Halsbury's Statutes 517.

(a) L.G.A., 1933, s. 190 (4); *ibid.*, 455.

(b) 7 Halsbury's Statutes 705.

(c) *Ibid.*, 792.

rectified. The purposes to which a reserve fund may be applied have been extended by local Act clauses to include the cost of renewing or extending any part of the works or undertaking, and otherwise for the benefit or development of the undertaking. In the case of an electricity reserve fund to which such provisions apply, the consent of the Electricity Commissioners to applications of this nature is usually necessary. Another variation is that which secures the power to invest reserve fund moneys in the local authority's own securities, *e.g.* by paying such moneys into the local authority's consolidated loans fund.

A reserve fund may not be applied to any purpose other than those prescribed. In *A.-G. v. Oldham Corpn.* (d) it was held that the provisions of a local Act dealing with the application of reserve funds (in terms similar to those mentioned above) were imperative and not merely permissive, and that the expenditure of the reserve funds on road repair work for the relief of unemployment was not an expenditure authorised by the local Act provisions, and was accordingly *ultra vires* the corporation. [393]

Sometimes, in addition to a reserve fund, a renewals fund is provided by means of contributions from surplus profits, for application as required to meet the cost of substantial renewals of plant, etc. Such a fund is in some cases authorised by a local Act, in which case it must pending its user be invested in statutory securities, but more frequently it is a non-statutory reserve, which, however, is justified on grounds of sound financial policy. But the need for a separate renewals fund disappears when the wider application of the reserve fund (see *ante*) is authorised by local Act, and it is usual to find that reserve fund provisions of local Acts direct that any separate fund so created in the past shall be carried to the credit of the reserve fund. [394]

Working Capital.—In order to finance the current transactions of those trading undertakings in respect of which consumers are granted credit facilities (*i.e.* principally water, gas and electricity), it is generally considered necessary to provide a certain amount of working capital.

Little or no working capital is required for passenger transport and markets undertakings, the revenue of which consists almost entirely of cash receipts which are immediately available to meet expenditure. There is no general power which authorises the provision of a permanent fund of working capital, and in the absence of local Act powers resort is frequently had to one of several methods which, while perhaps of doubtful legality, are unquestionably sound in practice. These methods comprise: (i) the carrying forward of unappropriated profits in the revenue account; (ii.) the appropriation of a sum from surplus profits to a "working capital" account; and (iii.) the retention in cash of part of the money forming the reserve fund or renewals fund.

Modern local Act clauses sometimes contain authority to borrow in order to provide a specific sum for working capital. In such a case a specific loan is raised and repaid by revenue contributions over a short period of years, so that at the end of the period there is a permanent fund of working capital. A general power to borrow *temporarily* by way of bank overdraft or otherwise, pending the receipt of revenues receivable during the period of account, is contained in sect. 215 of the L.G.A., 1933 (e). [395]

(d) [1936] 2 All E. R. 1022; 100 J. P. 395; Digest (Supp.).

(e) 26 Halsbury's Statutes 422.

TRAFFIC

See ROAD TRAFFIC.

TRAFFIC COMMISSIONERS AND GOODS VEHICLES LICENSING AUTHORITIES ^(a)

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Traffic Commissioners.—In order to administer the system of licensing public service vehicles which was inaugurated by the Road Traffic Act, 1930, Parliament directed that traffic commissioners should be appointed for different parts of England, Wales and Scotland (*aa*). The country was mapped out into thirteen areas, eleven in England and Wales, two in Scotland. The 1933 Act abolished one of these—the southern area of England and transferred it to other traffic areas, and also transferred part of the East Midland traffic area to the eastern traffic area; and now there are ten areas in England and Wales and still two in Scotland (*b*). For each of these areas, except the metropolitan area, there is a board of three commissioners: but in the metropolitan area, a single officer acts. The frontiers of the areas may be changed by order of the M. of T. provided such order is approved by a positive resolution of both Houses of Parliament (*c*). The chairman is appointed directly by the Minister; whilst his two coadjutors are chosen by the Minister from two panels. These are made up by the county councils, and by the county borough and urban councils whose areas lie, in whole or in part, within the larger areas into which the country is divided. The proceeding with regard to the formation of the panels has been fixed by Ministerial regulation (*d*). The chairman holds office during pleasure (*dd*); and the coadjutors for three years, subject to re-appointment if, when their times expires, they are still on a panel. The Minister may appoint deputies if a commissioner is ill or absent. He supplies the commissioners with clerks, etc. The commissioners may have no financial interest in any transport undertaking which carries passengers for reward, and may be removed for inability or misbehaviour by the Minister. Members of Parliament are ineligible (*e*). [396]

(a) This article depicts the law as it stood on September 3, 1939. The war-time enactments and orders are summarised in the Supplement.

(aa) Road Traffic Act, 1930, s. 62; 23 Halsbury's Statutes 656.

(b) For the appointment, see Sched. III. to the Road Traffic Act, 1930; 23 Halsbury's Statutes 691, as amended by the Road and Rail Traffic Act, 1933, s. 27, Sched. I.; 26 Halsbury's Statutes 892, 912 (Mahaffy and Dodson's Road Traffic Acts and Orders (2nd ed.), pp. 192 *et seq.*).

(c) Road Traffic Act, 1930, s. 62 (2), (3). Such variations occurred in the period 1931–1933, but the position was (*pro tem.*) stabilised by the 1933 Act.

(d) S.R. & O., 1931, No. 973 (Mahaffy, *op cit.*, p. 428).

(dd) Chairmen of Traffic Commissioners, etc. (Tenure of Office) Act, 1937; 30 Halsbury's Statutes 821. See Mahaffy and Dodson, *op. cit.*, Supplement, 1939, pp. 23–25.

(e) For substance of this paragraph. see Road Traffic Act. 1930. s. 63: 23

The commissioners sit in public when considering applications for road service licences and may, if they like, sit in public for the consideration of the other matters referred to them—such as the granting of public service vehicle licences. They must all sit for considering applications for road service licences; but in respect of other matters may delegate their jurisdiction to one of their body (*f*). They must make annual reports to the Minister (*g*). [397]

The primary duty of the commissioners is to issue public service vehicle licences, the second to issue road service licences. A certificate of fitness is an indispensable preliminary to the issue of the first; and the second can only be given after the first has been granted. Certificates of fitness have been described elsewhere (*h*). This issue is a matter for the certifying officers appointed by the Minister to serve in each traffic area; but these officers are not dependent on the commissioners (*i*). The commissioners must have notice of defects in a public service vehicle which are likely to endanger passengers or wayfarers (*j*). [398]

The important powers of the Traffic Commissioners in the matter of the issue of road service licences have already been explained when these licences were being discussed; also the power given to these commissioners to “back” licences for travel in their area which have been issued by another commissioner from a point in their area to a point without it (*h*). The commissioners also grant licences to drivers and conductors of public service vehicles (*k*). These are granted by the body in whose area the applicant for a licence resides (*l*). The jurisdiction of the commissioners is, however, in no case absolute. Any applicant for a public service vehicle licence, any applicant for a road service licence, any opponent of an application for a road service licence who has failed in his application, or any public service vehicle licence holder who is aggrieved by a suspension or revocation thereof, may appeal to the Minister of Transport, who may, on any such appeal make an order (even an order revoking a licence) which is binding on the commissioners. But the Minister’s appellate jurisdiction is itself limited. He must deal with the appeal before him and may revoke an existing licence; but he may not impose on a traffic commissioner any order to reject some application which may perchance be made to him at some future time. To do so would be an usurpation by the Minister of the commissioners’ discretion, restrainable by injunction (*m*). Applicants for the grant or renewal of a driver’s or conductor’s licence who are aggrieved by a refusal have an appeal to the magistrates (*n*). [399]

All the expenses of these commissioners and their staffs are borne by the Road Fund, into which the fees received from licences are paid (*o*).

In the metropolitan traffic area (*p*), the traffic commissioner has no coadjutors (*q*). He sits alone, and gives both public service vehicle

(*f*) Road Traffic Act, 1930, s. 64.

(*g*) *Ibid.*, s. 65. These are published by the Minister and contain valuable information on the operation of the Act.

(*h*) See title PUBLIC SERVICE VEHICLES.

(*i*) Road Traffic Act, 1930, ss. 68, 69.

(*j*) *Ibid.*, s. 70.

(*k*) Except in the metropolitan traffic area where the Commissioner of Metropolitan Police gives these. Road Traffic Act, 1930, s. 99, as replaced by London Passenger Transport Act, 1933, s. 51; 26 Halsbury’s Statutes 796.

(*l*) Road Traffic Act, 1930, ss. 77, 78.

(*m*) *Ibid.*, s. 81; *R. v. Minister of Transport, Ex parte Upminster Services*, [1934] 1 K. B. 277; Digest (Supp.).

(*n*) *Ibid.*, s. 82.

(*o*) *Ibid.*, ss. 86, 87.

(*p*) Delineated in Sched. III., Part I., para. 11 of the 1930 Act as replaced by the 1933 Act, s. 27. See Mahaffy, *op. cit.*, pp. 194, 249, 250.

(*q*) Road Traffic Act, 1930, s. 98 (8).

licences and road service licences. He does not grant drivers' or conductors' licences to persons residing in his area : these are granted by the Commissioner of Metropolitan Police (*r*). In the exercise of his jurisdiction to grant road service licences the commissioner must hear any objections which may be made by the Commissioner of Metropolitan Police ; and in case of difference, the matter stands referred to the Minister (*s*). [400]

The commissioners have important powers with regard to municipal public service vehicle services. By the Road Traffic Act, 1930, local authorities which actually operate a municipal passenger transport service are authorised to operate public service vehicle services as part of that service. So long as the local authority confines its operations within its own district, it may, if it was in 1930, or is subsequently, operating a tramway or trolley vehicle or light railway undertaking, operate public service vehicles in this way (*t*). This it may do without any special consent from the commissioners, though of course a road service licence is necessary (*u*). If, however, the authority proposes to run services outside its area it must have, as well as a road service licence and as a preliminary to it, the consent of the traffic commissioners of the area or areas affected. Careful provision is made as to the giving of these consents. When applications are made for them, the applicants must publish statutory notices with full particulars in the *London* or *Edinburgh Gazette* and also such notices as the commissioners require in local newspapers. The notices must give at least twenty-eight days, after the last of them is published, within which objections may be made. These, if they come from a local authority or competing transporter, must be heard at a public inquiry of which fourteen days' notice must be given (*a*). Consents given may be subsequently revoked or modified subject to appeal to the M. of T. (*b*). These consents do not become operative for one month and subsequent modifications or revocations are held up for three months. [401]

Various details as to the administrative powers of the commissioners are contained in the Licences and Certificates Regulations of 1934 (*c*). They may charge fees which must be paid before licences are issued. Licencees must inform them of changes of their addresses and send in their licences for endorsement with the new address. The commissioners may issue duplicate licences if the original is lost or destroyed or defaced. Suspended or revoked licences must be delivered to them. On the death of the holder of a licence arrangements are made for the continuance of the licences in the hands of his or her personal representative. The commissioners must have notice of every appeal against their decisions which is made by the M. of T. Application for a certificate of fitness, though the certificate is given by the certifying officer, must be made by the commissioners. Full details prescribe the procedure on application for road service licences. The commissioners

(*r*) Road Traffic Act, 1930, s. 99 (4) (*b*), as substituted by London Passenger Transport Act, 1933, s. 51 (4) (*b*) ; 26 Halsbury's Statutes 796 ; S.R. & O., 1933, No. 628 ; Mahaffy, *op. cit.*, pp. 159—160, 477.

(*s*) Road Traffic Act, 1930, s. 99, as substituted by London Passenger Transport Act, 1933, s. 51.

(*t*) Road Traffic Act, 1930, s. 101. This section came into effect in April, 1931 ; S.R. & O., 1931, No. 165.

(*u*) *Ibid.*, ss. 72 (8), 108 (2).

(*a*) See *ibid.*, s. 102, for this and the details in this paragraph.

(*b*) This appeal is described further in the section, "Appeal Tribunal," p. 191, *post*.

(*c*) S.R. & O., 1934, No. 1269 (Mahaffy, *op. cit.*, p. 613). It is not thought necessary to refer in notes to the various articles.

must publish an official journal weekly or fortnightly called "Notices and Proceedings" recording the applications made to them, their proposed public sittings, and their decisions on the various matters on which they adjudicate. In certain cases, where a sudden occasion makes it necessary for an applicant to get a road service licence at short notice, arrangements are made for dispensing with the formalities and for the issue of what may be called emergency road service licences (*d*). Licensees who go out of business as operators must inform the commissioners and send their licences to them (*e*). [402]

Goods Vehicles Licensing Authorities. (*a*) *Licensing of Vehicles.*—

The Road and Rail Traffic Act, 1933, established a system of licences for goods vehicles which is described elsewhere (*f*). The granting of these licences was committed into the hands of the chairmen of the area commissioners acting under the 1930 Act. They have no coadjutors for this work; but the Minister may appoint deputies to assist them. [403]

In the case of applications for C. licences, which only authorise the holder to carry his own goods, the discretion of the authority is limited (*g*). They must grant the licence unless the applicant has had a previous licence suspended or revoked. No condition is attached to it except the statutory requirement that the vehicle or vehicles authorised must be kept in a serviceable condition. With regard to the issue of A. and B. licences the authority has a large discretion (*h*). He may grant it for vehicles other or fewer than or different from those for which it is asked. Both as to A. and B. applications he must consider the public interest generally and that of those who require or who provide facilities for transport. He must consider any other licences held by the applicants, their previous conduct as carriers of goods, the number and type of vehicles they propose to use, the needs of replacement during repair, the substitution of the proposed vehicles for horse-drawn goods vehicles, and how far the applicant for a B. licence may be going to do work which is primarily A. licence work. If he refuses a licence or grants one which is different from that asked for he must, if requested, give his reasons in writing (*i*). A special claim to an A. licence is given to those who show the authority that the vehicles for which they ask licences will be used exclusively for the purpose of a contract entered into with some definite person carrying on a trade or business who is not himself a carrier. Applicants must show that the contract will last a continuous year or more. In these circumstances the authority must grant the A. licence unless special reasons exist. The vehicles authorised in this way may only work for the purpose of the contract, and the

(*d*) S.R. & O., 1934, No. 1269, art. 49.

(*e*) *Ibid.*, art. 50.

(*f*) See title ROAD TRAFFIC, sub-head "Goods Vehicle Licences."

(*g*) Road and Rail Traffic Act, 1933, s. 6; 26 Halsbury's Statutes 878, q.v. for the substance of what follows in this paragraph. Goods vehicles licences, the procedure for getting them, and the rest of the system apart from the section of the 1933 Act referred to in the notes here, are described in the section referred to in the last note.

(*h*) *Ibid.*, for substance of this paragraph.

(*i*) A large number of appeals dealing with the discretion of the authorities below has been heard by the Tribunal of Appeal. They will be found in the "Railway and Canal Traffic Cases," Vols. XXII. *et seq.* Reference may be made here in particular to the following: *Cox v. G.W.R.*, 22 Traf. Ca. 161; *L.N.E.R. v. Hurd*, *ibid.*, 147; *Enston v. L.M.S.R.*, *ibid.*, 3; *Petrie v. G.W.R.*, *ibid.*, 15; *Thornley v. L.M.S.R.*, *ibid.*, 249; *L.N.E.R. v. Robson*, *ibid.*, 233; *L.M.S.R. v. Barr*, *ibid.*, 44; *Yearsley v. G.W.R.*, *ibid.*, 258; *Bouts-Tillotson v. Wright*, 23 Traf. Ca. 106; *Smith v. L.M.S.R.*, 22 Traf. Ca. 262; and see for a full survey Mahaffy, *op. cit.*, pp. 220 *et seq.*, and 1939 Supplement thereto, pp. 9—14.

licences, unless the authority otherwise directs, lapse on its completion (j). [404]

(b) *Appeal Tribunal*.—The Road and Rail Traffic Act of 1933 did not follow the precedent of the 1930 Act with regard to appeals from the authority, but referred them to a specially constituted court (k). The chairman is a person of legal experience appointed by the Minister after conference with the Lord Chancellor. He holds office during pleasure (l). The Minister appoints the other members after conference with the President of the Board of Trade and the Secretary of State for Scotland. These members of the court hold office for three years but may be reappointed. The Minister may appoint deputies in the same way. Members of the House of Commons cannot be appointed, nor may any person who has any financial interest in any transport undertaking. They make rules of procedure (m) and must sit in Scotland to hear appeals from the Scottish authorities (n). They fix fees (o) for appeals: but these they may remit if satisfied of the applicants' or respondents' poverty. Their decisions on appeal are final. The Minister appoints a staff for the tribunal and pays the salaries of the court and the staff, subject to Treasury supervision, out of the Road Fund (p).

Both the licensing authorities and the appeal tribunal must keep proper accounts. These are sent to the Ministry of Transport and incorporated in his annual Road Fund Account (q). [405]

(c) *Heavy Goods Vehicles Drivers' Licences*.—By the R.T.A., 1934, the four heavier categories of vehicles established by the 1930 Act and also motor cars which have trailers (the fifth category) are "heavy goods vehicles" if they be either constructed or adapted (*use* does not affect the criterion) for the carriage of goods or burdens of any description (r). A driver who is licensed under Part IV. of the 1930 Act to drive all sorts of single-decked public service vehicles may drive heavy goods vehicles without the necessity for a heavy goods vehicle driver's licence. But if he has not such a licence he may not drive a heavy goods vehicle without a special licence. This the commissioners of each traffic area are authorised to issue to him. In the metropolitan area the traffic commissioner acts, as usual, alone. The licence may be limited so as to allow the holder to drive one or more classes of heavy goods vehicles. Drivers who had experience before April 1, 1934, need pass no test before this licence is issued to them: but newcomers who cannot show that experience may be submitted by the commissioners to a test. The licence lasts for three years but may be revoked for defects of behaviour or physique. Applicants who are aggrieved by any exercise of the commissioners' discretion in this matter may appeal first to them for a fresh hearing and then to a court of summary jurisdiction which may overrule the commissioners and direct the grant of a licence. No licence of this kind is necessary to authorise a person to drive an agricultural locomotive ploughing engine or agricultural traction engine (s). [406]

(j) Road and Rail Traffic Act, 1933, s. 7, q.v. for details. Since 1934 these licences have come to be known as "Contract Licences."

(k) *Ibid.*, s. 15, for the substance of this paragraph.

(l) Chairmen of Traffic Commissioners, etc. (Tenure of Office) Act, 1937, s. 1; 30 Halsbury's Statutes 821.

(m) See S.R. & O., 1934, No. 657 (Mahaffy, *op. cit.*, p. 587).

(n) Road and Rail Traffic Act, 1933, s. 15 (10).

(o) See S.R. & O., 1934, No. 709 (Mahaffy, *op. cit.*, p. 593).

(p) Road and Rail Traffic Act, 1933, s. 22.

(q) *Ibid.*, s. 23.

(r) See the definition in Road Traffic Act, 1934, s. 31 (12), and that section for what follows; 27 Halsbury's Statutes 537.

(s) *Ibid.*, s. 31 (11), and note in Mahaffy, *op. cit.*, p. 331.

TRAFFIC CONTROL

See ROAD TRAFFIC.

TRAFFIC DAMAGING ROAD SURFACE

See UNREASONABLE AND EXCESSIVE USER OF HIGHWAYS.

TRAFFIC SIGNALS

See ROAD TRAFFIC.

TRAFFIC SIGNS

See ROAD TRAFFIC.

TRAILERS

See MOTOR VEHICLES ON HIGHWAYS ; ROAD TRAFFIC.

TRAMWAY SHELTERS

See ROAD AMENITIES.

TRAMWAYS AND TROLLEY VEHICLES

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See also title: LIGHT RAILWAYS.

Introductory.—The introduction of tramways in this country dates from 1860, when a tramway track was laid down in Birkenhead and worked by horse traction. This was followed by the construction of tramways in other parts of the country, notably in Liverpool in 1868, and London in 1869. These were authorised under special Acts, but there were also unsuccessful attempts to construct tramways on public roads without statutory authority. In the course of a few years the development of this form of transport had reached the stage when the need of public legislation was apparent, and in 1870 the Tramways Act (*a*), "to facilitate the construction and to regulate the working of tramways," was passed. The Act applies to England, Wales and Scotland, but not to Ireland (sect. 2) (*a*). [407]

Authorisation. Provisional Orders and Special Acts.—The Tramways Act, 1870 (*a*), is of a comprehensive character and provides a simple mode of obtaining statutory authority by provisional order or special Act for the construction of tramways in any district. It authorises the laying down and maintaining of tramway lines in highways, which, without statutory authority would constitute an indictable nuisance. The Act makes provision under Part I. for a local authority (*b*), corporation, company or body of persons (termed the promoters) (*c*), to apply to the Board of Trade (now the M. of T.) (*d*) for provisional orders conferring the necessary powers for the construc-

(*a*) 20 Halsbury's Statutes 3.

(*b*) Defined in s. 3 and Sched. A, Part I.

(*c*) Defined in s. 24.

(*d*) By the operation of the M. of T. Act, 1919; 3 Halsbury's Statutes 422, and the M. of T. (Board of Trade Exception of Powers) Order, 1919, made thereunder, the powers of the Board of Trade in relation to (*inter alia*) light railways and tramways, with certain exceptions, were transferred to the M. of T.

tion of tramways. A provisional order requires the confirmation of Parliament before it becomes law, and this is effected by means of a confirming Act promoted by the M. of T. Parts II. and III. of the Act constitute a code of law, governing the construction and working of tramways on public roads whether authorised by provisional order or by special Act. It should be pointed out that many undertakers obtain powers to run their vehicles on highways under the procedure of the Light Railways Act, 1896 (*e*), in lieu of or in addition to the Tramways Act, 1870 (*f*). [408]

Local Authorities. Power to Work.—An important feature of the Tramways Act, 1870, is that while powers could be obtained to construct tramways and to acquire existing undertakings by a local authority, sect. 19 (*g*) refrained from authorising a local authority to work their tramways, the intention at that time being that a local authority constructing and owning tramways should either lease them to private persons or companies, or leave them open to be used by the public on payment of the authorised tolls. This latter provision proved to be entirely useless and unnecessary, as there is no recorded instance of a tramways being made use of by the public in the manner contemplated by the section. In 1882, the Huddersfield corporation, who had constructed tramways in the borough, having failed to lease them on satisfactory terms, obtained a provision (*h*) empowering the Board of Trade to license the corporation to work their tramways; and for some years after this, similar provisions were embodied in Tramway Acts and Orders. Since 1896, it has been the practice of Parliament to authorise a local authority to work their tramways without the necessity of obtaining a licence for the purpose from a Government department.

The Tramways Act was passed in 1870, at a time when the only motive power contemplated was either steam or animal power. In the intervening period, great changes have taken place in road passenger transport; and electricity as a propellant of tramcars has become universal. Further, certain provisions of the Act are, under present-day conditions, no longer suitable and have been replaced and extended over a long series of provisional orders and special Acts. But notwithstanding these changes, the 1870 Act forms the substantial basis of all tramway legislation. [409]

Applications for Provisional Orders, authorising the construction of tramways in any district, may be obtained by :

- (1) The local authority of such district ;
- (2) Any person, persons, corporation or company, with the consent of the local authority of the district in which any part of the proposed tramway is situated, and also the consent of the road authority where there is a road authority distinct from the local authority.

The consent of the road authority is also necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority (*i*).

(*e*) 14 Halsbury's Statutes 252.

(*f*) See title LIGHT RAILWAYS.

(*g*) 20 Halsbury's Statutes 12.

(*h*) Huddersfield Corporation Act, 1882.

(*i*) Tramways Act, 1870, s. 4 ; 20 Halsbury's Statutes 7.

The procedure with respect to provisional orders is governed by Part I. and Schedules A, B and C of the Tramways Act, 1870 (*k*), and the Board of Trade rules made under the provisions of the Act (*l*).

The form and contents of provisional orders are regulated by sects. 8—21 and Parts II. and III. of the Act (*m*). [410]

Opening of Tramways.—By rule XXV. of the Board of Trade rules, the promoters must give to the M. of T. at least fourteen days' notice in writing of their intention to open any tramway, or portion of a tramway, and such tramway or portion of tramway must not be opened for public traffic until an inspector appointed by the Minister has inspected the same, and the Minister has certified that it is fit for such traffic. The above-mentioned notice should be accompanied by the following documents, viz :

- (1) A copy of the Act or provisional order authorising the construction of the tramways.
- (2) A copy or tracing of so much of the deposited plans and sections as relates to the portion of tramway proposed to be opened, distinguishing between double and single line, and showing in red ink any variations therefrom in the tramways as constructed.
- (3) A list of the local and road authorities concerned.
- (4) A diagram of the lines submitted for inspection, on a scale of about two inches to a mile. [411]

Lapse of Powers.—Sect. 18 of the Tramways Act, 1870 (*mm*), provides that if the promoters do not within two years from the date of a provisional order, complete the tramway authorised by such order and open the same for public traffic, or if within one year from the date of the order or such shorter time as is prescribed therein the works are not substantially commenced (*n*) or, having been commenced, are suspended without sufficient reason, the powers given by the provisional order for constructing such tramway, executing such works, or otherwise in relation thereto shall cease to be exercised except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Minister of Transport. [412]

Prolongation of Time.—Application for a prolongation of the time for the commencement or the completion of the works must be made to the M. of T. in accordance with the Board of Trade rules under the powers conferred by sect. 18 of the Tramways Act, 1870 (*nn*). The application should be in the form of a memorial setting forth the grounds on which the application is made.

Notice of the intention to apply for a prolongation of time must be published by advertisement once at least in each of two successive weeks in a local newspaper stating the period to which it is proposed to prolong the time and containing a notification of the procedure to be adopted by persons desirous of making any representation to the M. of T. or of bringing before him any objection respecting the application. [413]

A similar notice must be delivered to every local and road authority

(*k*) 20 Halsbury's Statutes 7, 32, 33, 35.

(*l*) See Board of Trade rules made with respect of provisional orders under the Tramways Act, 1870. Reprinted 1913.

(*m*) 20 Halsbury's Statutes 8—13, 14, 20.

(*mm*) *Ibid.*, 11.

(*n*) See *A.-G. v. Bournemouth Corpn.*, [1902] 2 Ch. 714, C. A. ; 43 Digest 340, 9.

(*nn*) 20 Halsbury's Statutes 11 ; S.R. & O., Rev. 1904, XIII., Tramway E. & S., p. 15 ; Board of Trade Rules, p. 18.

before the second publication, and a statement that a copy of the notice has been duly served on each local and road authority must be sent to the M. of T. with the application.

Before the Minister grants the application he may impose such conditions, if any, as he may think fit. [414]

Special Acts.—The method of applying for tramway powers by means of provisional order is falling into desuetude and in fact there have been very few applications for tramway provisional orders during recent years. Instead, it has become the practice for a local authority desirous of obtaining tramway powers or of extending their existing tramway system to proceed either by special Act or to include the application in a bill which the local authority may be promoting in Parliament for general purposes.

In the case of a Provisional Order, it is necessary to obtain the consent of the local and road authorities for two-thirds of the length of the tramway, and this cannot be dispensed with. In the case of a special Act, such consent is also required by the Standing Orders of Parliament, but the Standing Orders can be, and, in suitable cases, have been, dispensed with.

Moreover, in the case of a Provisional Order, sect. 9 of the Tramways Act, 1870 (*o*), applies which prohibits the authorising of a tramway to be laid, so that for a distance of thirty feet or upwards a less space than nine feet six inches shall intervene between the outside of the footpath and the nearest rail of the tramway if one-third of the owners or of the occupiers of the houses, shops, warehouses abutting upon such part of the road express their dissent. There is no such restriction in the case of a special Act.

The procedure for a special tramway Act is practically the same as that prescribed for private bills and is governed by the standing orders of Parliament. The provisions of the Tramways Act, 1870, and the Board of Trade Rules relating to provisional orders, where applicable, must also be complied with. [415]

Tolls. Tolls and Charges.—Authority is given under sect. 45 of the Tramways Act, 1870 (*p*), for the promoters and lessees of a tramway to demand and take tolls in accordance with the regulations specified in the provisional order or special Act.

A list of the tolls and charges must be exhibited conspicuously inside and outside each carriage using the tramway.

Maximum tolls and charges (originally 1*d.* per mile, but now usually 1½*d.* per mile) are prescribed for passengers, and special provision is made for cheap fares for labouring classes, and an obligation to run a proper and sufficient service for artisans, mechanics and daily labourers every morning and evening (except Sundays, Christmas Day and Good Friday) is commonly imposed in the Act or Order.

The power to carry animals, goods and minerals has not been used to any extent by municipal tramway undertakings; but several municipal systems have established successful parcel carrying businesses as an adjunct to their tramway undertakings. In an action brought by a rival firm of carriers against a corporation, it was held that the defendants were not entitled to expend any part of the city fund, or the receipts of the tramway undertaking worked by them, or the proceeds of any city rate, or any other moneys of the corporation or the city, for the purpose of carrying on the business of carriers of parcels

or goods, except as part of and in connection with their tramway undertaking, and in respect of articles carried on the tramways for the time being, belonging to or under lease to them, or over which they had running powers (g). [416]

Construction of Tramways.—By sect. 22 of the Tramways Act, 1870 (r), Parts II. and III. of that Act apply to every tramway authorised by provisional order or special Act and are to be incorporated therewith, and, save where expressly varied or excepted by such order or Act, all the provisions of the Tramways Act, 1870, apply to the undertaking authorised thereby, and with the provisions of every other Act or part of Act incorporated therewith forming part of the provisional order or special Act (s) are to be construed as forming one order or Act (s).

Consideration is given below to the principal provisions of the Tramways Act, 1870, which are incorporated in provisional orders and special Acts.

These, and the additional provisions which have from time to time been embodied in orders and special Acts to meet the conditions brought about by the development of the tramway industry, together with the rules and regulations of the M. of T., form the tramway code and will be dealt with later in this article. [417]

General Provisions. Use of Carriages with Flange Wheels.—By sect. 34 (t) the promoters of tramways authorised by special Act or order and their licensees are empowered to use on the tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act. [418]

Motive Power.—The motive power to be used on the tramways is to be prescribed by the special Act or order and where no such power is prescribed, by animal power only (sect. 34) (t). [419]

Licences to Use Tramways may be Granted to Third Parties.—By sect. 35 (u) after a tramway has been opened for public traffic for three years the M. of T., after an inquiry, at the request of the local or road authority, or twenty inhabitant ratepayers on the grounds that the public are deprived of the full benefit of the tramways, may grant licences to any company or person to use such tramway in addition to the promoters, subject to certain conditions as regards the term of the licence, the number of carriages to be run on the tramway, the tolls to be paid to the promoters by the licensee for the use of the tramway (u). [420]

Penalty in Default of Payment of Tolls.—Sect. 36 (a) empowers the promoters, in the event of the licensee's failure to pay the tolls due in respect of passengers carried, to detain and sell the carriages on such tramway or premises belonging to the licensee, and imposes a penalty in cases where the licensee fails to furnish an account of the number of passengers carried or fraudulently gives false account. Disputes between the licensee and the promoters as to the amount of tolls due are dealt with under sect. 39 (a). [421]

Licensee Liable for Trespass or Damage.—Under sect. 40 (a) a licensee is liable for any trespass or damage done by his carriages or horses or by any of the servants employed by him upon the tramway. Such servant may be convicted of trespass and damage before two justices and upon conviction the licensee shall pay the promoters, lessees, or persons injured as the case may be, the damage, not exceeding fifty pounds. [422]

(g) *A.-G. v. Manchester Corpn.*, [1906] 1 Ch. 643; 70 J. P. 201; 13 Digest 862, 972.

(r) Defined by s. 23 of Tramways Act, 1870; 20 Halsbury's Statutes 14.

(s) 20 Halsbury's Statutes 14. (t) *Ibid.*, 20. (u) *Ibid.*, 21. (a) *Ibid.*, 22.

Discontinuance and Removal.—If the promoters discontinue the working of the tramway or of any part of it, for three months (such discontinuance not being occasioned by circumstances beyond their control) (b), the M. of T. may by order declare that their powers in respect of the tramway or the part discontinued shall be at an end, and thereupon such powers shall cease, unless the same are purchased by the local authority. When such an order has been made, the road authority may, after two months, and under authority of the M. of T., remove the tramway or part so discontinued. The promoters must pay to that authority the cost of removal and making good the road, as certified by the road authority, failing which the road authority (without prejudice to any other remedy) may sell the materials and reimburse themselves (sect. 41) (c). [423]

Insolvency of Promoters.—Provision is also made, in the event of insolvency of the promoters of a tramway, for similar procedure and remedy as is prescribed in the case of discontinuance (sect. 42) (d). [424]

Purchase of Tramways.—*Compulsory Purchase by Local Authority.*—By sect. 43 (e), the local authority in any district where the tramway is not owned by the local authority may by resolution (f) passed at a special meeting of the members of the council, within six months after the expiration of a period of twenty-one years from the time when the promoters were empowered to construct the tramway, and within six months after the expiration of every subsequent period of seven years (or within three months after any order made by the M. of T. on the discontinuance of working or the insolvency of the promoters as described above) with the approval of the Minister, by notice in writing require the promoters to sell and thereupon the promoters shall sell to them their undertaking, or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway and all lands, buildings, works, materials and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the M. of T. on the application of either party; and the expenses of the reference must be borne and paid as the referee directs. When any such sale has been made, all the rights, powers and authorities of the promoters in respect to the undertaking sold, are transferred to the purchasing authority. [425]

Payment of Purchase Money Out of Rates.—The local authority may pay the purchase money and all expenses incurred by them in the purchase of a tramway undertaking under this sect. 43 with similar borrowing powers as if such expenses were incurred in connection with the promotion of a provisional order (g).

The local rate for the purpose of the Act is defined in Schedule A, Part I., of the Tramways Act, 1870 (h).

(b) Want of sufficient funds is not a circumstance beyond their control for this purpose (s. 41).

(c) 20 Halsbury's Statutes 23.

(d) *Ibid.*, 23.

(e) *Ibid.*, 24.

(f) A month's previous notice of the meeting and of the purpose thereof must be given in the usual manner; two-thirds of the members must be present and vote at the meeting and a majority of the members must concur in the resolution.

(g) Tramways Act, 1870, s. 43; 20 Halsbury's Statutes 25.

(h) 20 Halsbury's Statutes 32.

Where the local rate, owing to statutory limitation, is insufficient for the payment of the purchase money and expenses the M. of T. may by provisional order extend the limit of such local rate to such amount as the Minister may think fit (i). [426]

The Tramway Undertaking.—This has been defined as “all the real and movable property belonging to the promoters necessary for conducting tramway traffic, together with all rights and interests in or connected with such property which belong to the promoters and are capable of being transmitted from them to the purchaser” (j).

Although for other purposes of the Tramways Act, 1870, the expressions “the tramways” and “the undertaking” are regarded as synonymous, in connection with the cases decided under this section of the Act it was laid down in the House of Lords that the word “tramway” had a different interpretation to the word “undertaking” as meaning the tramway lines as laid down on the highway and nothing more. [427]

The local authority are bound to purchase all the lands, buildings, works, materials and plant of the promoters even though part of them are suitable to, and used for, not only the purposes of the lines which are being purchased, but also for the purposes of other lines which already belong to the local authority, and are under lease to the promoters and worked by them jointly with the promoters’ lines (k).

If such lands, buildings, works, materials and plant are suitable to, and used for, the purposes of the undertaking, they must be purchased by the purchasing authority, even if they are situated outside that authority’s district (l). [428]

Valuation of the Tramway—Purchase Price.—Sect. 43 of the Tramways Act, 1870 (ll), has been construed in a number of decided cases. It has been held that, on a sale to the local authority, the local authority becomes entitled to the exclusive use of the tramway, not by transference of any right from the promoters, but by virtue of the statute alone; consequently the price to be paid as representing the “then value of the tramway” must be measured by what it would cost at the date of the sale to construct the lines, subject to a deduction for depreciation, and that no allowance must be made for the rental value of the tramway, or for the rights, powers and privileges of the promoters (m). The costs incurred by promoters in obtaining statutory powers to construct and work the tramway, but without allowance for depreciation must be taken into consideration by an arbitrator; costs incurred in opposing Parliamentary bills for the purpose of protecting the promoter’s tramway must not, however, be included (n). [429]

(i) Tramways Act, 1870, s. 43; 20 Halsbury’s Statutes 25.

(j) *Edinburgh Street Tramways Co. v. Edinburgh*, [1894] A. C. 456; 63 L. J. (Q. B.) 769; 71 L. T. 301; 10 T. L. R. 625; 6 R. 317, H. L.; 43 Digest 354, 113.

(k) *Re Manchester Carriage and Tramways Co., Ltd. and Manchester Corpn.* (1902), 87 L. T. 504; 67 J. P. 14, sub nom. *Manchester Carriage and Tramways Co. v. Manchester Corpn.*, 18 T. L. R. 779; 46 Sol. Jo. 687; settled on appeal (1903), 19 T. L. R. 439, C. A.; 43 Digest 353, 109.

(l) *Manchester Carriage and Tramways Co. v. Swinton and Pendlebury U.D.C.*, [1906] A. C. 277; 70 J. P. 81; 75 L. J. (K. B.) 839; 93 L. T. 820; 22 T. L. R. 154; 4 L. G. R. 214, H. L., reversing S. C., sub nom. *Re Manchester Carriage and Tramway Co., Ltd. and Swinton and Pendlebury U.D.C.*, 21 T. L. R. 91, C. A.; 43 Digest 353, 110.

(ll) 20 Halsbury’s Statutes 25.

(m) *Edinburgh Street Tramways Co. v. Edinburgh Corpn.*, [1894] A. C. 456; 43 Digest 354, 113; and *London Street Tramways Co. v. L.C.C.*, [1894] A. C. 489; 43 Digest 355, 115.

(n) In *Re Manchester Carriage and Tramways Co., Ltd., and Ashton-under-Lyne Corpn.* (1904), 68 J. P. 576; 43 Digest 353—4, 110.

A local authority has the right, where tramways have been constructed under more than one special Act or order at different periods, although they form one undertaking, to purchase the tramway authorised under the respective Act or order when each statutory period expires. [480]

When Local Authority may Purchase.—It has been held under sect. 43 that when one tramway has been incorporated with others by statute in one undertaking, the local authority may purchase such tramway within six months after the expiration of twenty-one years from the time when the promoters were authorised to construct the undertaking, although no right to purchase the other lines has arisen, or although they may not be within the district of the purchasing authority and although the general system of the tramway may be dislocated by such purchase (p). [481]

Joint Purchase Subject to the Provisions of Sect. 43.—Two or more local authorities may jointly purchase any tramway undertaking, or so much of the same as is within their districts (q). [482]

Right to Possession.—The purchasing authority has no right to possession of the tramway before payment of the purchase money (r). [483]

Purchase by Agreement.—By sect. 44, the promoters may, six months after a tramway has been opened for traffic, with the consent of the M. of T., sell their undertaking to any person, persons, corporation or company, or to the local authority of the district, and when any such sale has been made all the rights, powers, authorities, obligations and liabilities of the promoters in respect to the undertaking sold are transferred to, and may be exercised by, the purchasers as if the tramway had been constructed by them under the powers conferred by special Act and accordingly they are deemed to be the promoters. The resolution to purchase such tramway in the case of a local authority is to be passed in the same manner as is provided for in the event of a compulsory sale under sect. 43. The local authority may pay the purchase money and all expenses connected therewith out of the same funds as if such purchase were made under the authority of sect. 43.

The sale of a tramway under this provision otherwise than to the local authority is subject to the right of compulsory purchase by the local authority under sect. 43. The promoters have no power to transfer their statutory powers and liabilities except under the provisions of sects. 43 and 44. It was laid down in the House of Lords that the power exclusively to use the tramways was granted to the promoters as such, and is not capable of transfer by them (s). [484]

Lease of Tramways (t).—Notice of the intention to make such lease must be published by the local authority by advertisement, and a copy

(p) *North Metropolitan Tramways Co. v. L.C.C.* (1895), 60 J. P. 23; 43 Digest 353, 108.

(q) *North Metropolitan Tramways Co. v. L.C.C.*, *supra*; *Re Southampton Tramways Co. and Southampton Corpn.* (1899), 81 L. T. 652, C. A.; 43 Digest 355, 116 (where it was held that the referee must take into account the fact that the undertaking was subject to the contingency of being sold compulsorily); *North Metropolitan Tramways Co. v. Leyton U.D.C.* (1908), 98 L. T. 792, C. A.; 43 Digest 354, 112.

(r) *Manchester Carriage and Tramways Co. v. Manchester Corpn. and Stretford U.D.C.* (1902), 87 L. T. 878; 67 J. P. 17; 43 Digest 355, 120.

(s) *Edinburgh Street Tramways Co. v. Edinburgh Corpn.*, [1894] A. C. 456; 43 Digest 354, 113.

(t) Precedents of a form of agreement for lease and a lease by a local authority will be found in the *Encyclopædia of Forms and Precedents* (2nd ed.), Vol. XVII., and Seward Brice's *Law of Tramways and Light Railways*.

of the lease must be deposited according to the regulations contained in Part I. of Schedule C. of the Tramways Act, 1870.

The provisions of the schedule prescribe that one month before any lease is submitted to the M. of T. notice is to be given by advertisement to be inserted once at least in each of two successive weeks in a newspaper published in the district, and also in the *London Gazette*. The advertisement is to contain (1) the term of the lease, (2) the rent reserved, (3) a general description of the covenants and conditions contained therein, and (4) the place where the same is deposited for public inspection (u). [435]

Sect. 19 (a) provides that the term of the lease is for a period not exceeding twenty-one years, but leases for longer periods have been approved by the M. of T.

In addition to the statutory provisions contained in the lease it is customary to insert covenants on the part of the lessee relating to the service to be provided and the fares to be charged (including workmen's cars and fares), construction and licensing of carriages, drivers' and conductors' licences, compliance with bye-laws, maintenance and repair of the tramway and renewal of the same from time to time, avoidance of injury to streets, obligation to keep the tramway in good working condition and in an efficient state for traffic, and to yield up the same in good condition at the end of the term, with provision for re-entry on non-payment of rent, or breach of covenants; and covenants by the lessors for quiet enjoyment, an option to the lessee to lease additional tramways, prohibition of competition, etc. [436]

In present-day leases where a lessee provides and owns the electrical equipment, provision is made for the maintenance and renewal of the equipment, with an option to the lessor to purchase at the termination of the lease, and in the case of the lessor being the electrical undertaker for the district and supplying the electrical energy for working the tramways the arrangements covering such supply and the price to be paid are set out.

The rental may be a fixed annual sum based upon the cost of obtaining the provisional order or special Act, and the construction of the tramway or acquisition of an existing tramway, or it may be a varying amount having some relation to the receipts derived from the working of the tramway or the undertaking of the lessee. [437]

Local Authorities' Bye-Laws.—By sect. 46 (b) the local authority of a district in which a tramway is laid down is empowered to make regulations subject to the provisions of the special Act as to the following matters:

The rate of speed to be observed upon the tramway; the distance at which carriages using the tramway shall be allowed to follow one after the other; the stopping of carriages using the tramway; and the traffic on the road in which the tramway is laid (c).

The promoters of any tramway and their lessees may make regulations for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them, and for regulating the travelling in or upon any carriage belonging to them.

(u) Tramways Act, 1870, Sched. C., Part I.; 20 Halsbury's Statutes 35.

(a) 20 Halsbury's Statutes 12.

(b) *Ibid.*, 26.

(c) A municipal corporation which has acquired tramways may be compelled by *mandamus* to comply with its local Act and make bye-laws specifying the distance at which one tramcar should follow another (*R. v. Manchester Corpn.*, [1911] 1 K. B. 560; 43 Digest 349, 81).

Such bye-laws are to be made in accordance with the procedure adopted in Part II. of Schedule C. of the Tramways Act, 1870 (d), and are subject to the approval of the M. of T. [438]

Provision is also made by sect. 47 (e) for penalties for breach of bye-laws; and these are recoverable in manner provided by the Summary Jurisdiction Acts.

Sect. 64 of the Tramways Act, 1870, empowers the M. of T. to make rules, but not bye-laws. Though, however, there is no general power under that Act for the M. of T. to make bye-laws it is the practice under special Acts to empower him to do so. The Minister has issued model bye-laws for the use of local authorities and promoters under this provision.

Where a bye-law provided that every passenger shall enter or mount upon or depart from the hindermost or conductor's platform and not otherwise, it was held that a passenger who, on the arrival of a car at the terminus, had alighted from the end which, while the car was previously in motion, was the driver's end, had committed a breach of the bye-law (f). [439]

Avoiding Payment of Fare—Penalty (g).—A passenger travelling or having travelled in a tramway-car who avoids or attempts to avoid payment of his fare, or who having paid his fare for a certain distance knowingly and wilfully proceeds in such car beyond such distance and does not pay the additional fare or attempts to avoid payment thereof or who knowingly and wilfully refuses or neglects to quit the car at the point to which he has paid his fare is liable to a penalty. [440]

A bye-law relating to the operation of a tramway system provided as follows: "Each passenger shall immediately upon demand, or in case no demand shall have been made before leaving the carriage, pay to the conductor the fare legally demandable for his journey and accept a ticket therefor. Any person offending against or committing a breach of the bye-law is liable to a penalty not exceeding forty shillings." It was held that the bye-law was *ultra vires* as being repugnant to the general law of the land and also as being unreasonable, and that a person who had not paid a fare legally demandable because no demand had been made could not therefore be convicted of an infringement of the bye-law (h). [441]

M. of T. Regulations and Bye-Laws.—The construction and working of a tramway, where the motive power to be used is electricity comes within the scope of the following regulations and requirements of the M. of T.

I. Guard Wires on Electric Tramways and Light Railways Laid on Public Roads.—These regulations prescribe the form of overhead con-

(d) 20 Halsbury's Statutes 36.

(e) *Ibid.*, 27.

(f) *Monkman v. Stickney*, [1913] 2 K. B. 377; 43 Digest 349, 86.

(g) Tramways Act, 1870, s. 51; 20 Halsbury's Statutes 28.

(h) *London Passenger Transport Board v. Sumner* (1935), 52 T. L. R. 13; 99 J. P. 387; Digest (Supp.)

See also *Lowe v. Volp*, [1896] 1 Q. B. 256; 43 Digest 350, 91; and *Nimmo v. Lanarkshire Tramways Co.* (1912), 49 Sc. L. R. 549; 43 Digest 351, p.

Cf. The Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, dated June 18, 1936, made by the Minister of Transport; S.R. & O., 1936, No. 619, para. (c) of regulation 11 provides:

"No passenger shall leave or attempt to leave a stage or express carriage without paying the fare for the journey which he has taken, and with intent to avoid payment thereof."

struction to be adopted for the protection of telegraph, telephone and other wires unprotected with a permanent insulated covering, which cross or are liable to fall upon or to be blown on to the overhead conductors of tramways or light railways. Efficient guard wires are to be erected and maintained at such places at the cost of the tramway operator where he is "second comer." [442]

II. *Memorandum Regarding Details of New Lines and Equipment of Tramways and Light Railways Laid upon Public Roads.*—The following is a summary of the memorandum :

(a) Clearance.—(1) A clearance of at least 15 inches is required between any point on the sides of passing cars and between the side of a car and the kerb or any standing work such as walls and fences or posts in a street.

(2) For standard gauge systems double track should be laid with an interval between centres of 8 feet 6 inches with a corresponding increase on curves.

(3) In roads where the general vehicular traffic is considerable, and the full interval of 9 feet 6 inches between the edge of the kerb and the nearest rail cannot be provided by a widening of the metalled roadway it is desirable to avoid, as far as possible, such an interval between rail and kerb—for example from 5 feet to 7 feet—as might lead to the liability of other vehicles being trapped. In such cases it will be for consideration having regard to the available width of roadway, whether the single or double line should not be laid so far out of the centre of the road, as to provide the minimum clearance between car and kerb, as specified above, on the one side, and the maximum clearance on the other.

(4) The clearance between the top deck of uncovered cars and the underside of bridges should not, if possible, be less than 6 feet 6 inches.

(b) Overhead Electrical Equipment.—The electrical energy supplied must not be generated at or transformed to a pressure higher than 650 volts and the difference in potential between the overhead conductors and the earth must not exceed 600 volts. The space between the posts which support the overhead conductors should be about 120 feet and the overhead conductors must not be at a less height than 20 feet from the surface of the street except where they pass under bridges. Each positive conductor must be divided up into half-mile sections with an emergency switch between every two. Span wire construction is preferred, but bracket arms not exceeding 16 feet in length may be used, if this form of construction is economically desired ; centre posts must not be used without the consent of the M. of T., and stone kerbing round posts should not be such as to enable any person to stand upon it unless the clearance is ample for safety, and gas lamp brackets attached to posts must have triple insulation.

(c) Permanent Way.—The weight of rails per yard, and provisions regarding the width of the groove of the rails and arrangements for draining away storm water from the track are prescribed. Details of the mode of construction of the permanent way must be submitted to the M. of T. for approval.

(d) Car Equipment.—Type drawings of all cars intending to be used on a line must be submitted to the Minister for approval. The requirements under this head relate to speed indicators, brakes, sanding arrangements, life-guards, "reversed" type staircases, folding steps, top deck railings, the use of (a) double-deck cars on lines having severe gradients and sharp curves, and (b) top-deck covers on lines where the

gauge is 3 feet 6 inches or less ; also the requirements dealing with trolley booms and heads and the draw-gear on trailer cars. [443]

III. *Regulations Relating to the Use of Electrical Power.*—These regulations are technical and relate to the use of electrical power on tramways or light railways, for preventing fusion or injurious electrolytic action upon gas or water pipes or other metallic pipes, etc., and for minimising injurious interference with the electric wires, lines and apparatus of parties other than the operating authority. [444]

IV. *Regulations and Bye-Laws Safeguarding the Public against Danger.*—These regulations and bye-laws may be regarded as the working regulations of a tramway or light railway. They prescribe the requirements of the Ministry as to the construction of carriages used on the tramways ; ensuring the safe entrance and exit and accommodation of passengers ; the fitting of adequate brakes (including hand, electric and, in certain cases, track brakes), life guards, speed indicators and bells ; the lighting and numbering of carriages ; the use of trailer carriages ; the speeds at which carriages may be driven ; and compulsory stopping places. The modern practice is to grade speeds from a minimum of 5 miles an hour through curves below a given radius, facing points, and level crossings, advancing in multiples of 5 miles to a maximum of 30 miles an hour on straight wide stretches of roads where the traffic conditions warrant it, and on reserved tracks. The regulations also prescribe the conditions governing the supply of electrical energy to the overhead conductors, intervals between the supports to which the overhead conductors are attached, division of the positive conductor into sections, testing of the overhead conductors, insulation of the collecting gear, earthing of electrical apparatus and handrails, and insulation of gas and electric lamp brackets. Penalties are imposed for breaches of the regulations and bye-laws. Printed copies of the regulations and bye-laws are to be kept in a conspicuous position inside each carriage used on the tramways.

Regulations (c) and (d) are made by the M. of T. after the tramway or light railway has been inspected and certified to be fit for public traffic by an inspecting officer of the Ministry. They are printed and on sale as statutory rules and orders and separate codes are made in respect of each tramway or light railway system. They differ from the requirements (a) and (b) of the M. of T., which are of general application to every electric tramway and light railway undertaking. [445]

“**Reserved**” Construction.—A brief mention may be made of a modern variation of the usual form of tramway construction, and that is the laying down of tramways on reserved track separate from the carriageway. This method has been adopted by several of the larger municipal undertakings, particularly in connection with the newly developed housing estates. The ordinary type of girder rail is employed, laid on sleepers, and the space between the rails is grassed-over or filled-in with ballast. Crossing places for vehicles and pedestrians are provided at regular intervals along the route. This form of construction necessitates certain exceptions from the tramway statute law.

The local Acts usually provide that such reserved tracks are not to be regarded as part of the highway, and the provisions of the Tramways Act, 1870, relating to roads (other than for the prevention of offences and prosecution of offenders) do not apply. This exception also includes the provisions usually inserted in orders and special Acts requiring the tramways to be kept on a level with the surface of the road, and the

penalty for not maintaining in good condition and repair the rails of the tramway and the sub-structure. [446]

Wages and Working Conditions.—The regulation of wages and working conditions of employees engaged in tramway, omnibus and trolley bus undertakings is not governed by statutory enactments such as the case with the operation of public service vehicles under the Road Traffic Acts.

Joint Industrial Council.—A National Joint Industrial Council for the road passenger transport industry (tramways, trolley buses and motor omnibuses) is, however, in existence, the main object of which is "to secure the largest possible measure of joint action between employers and employees by the regular consideration and settlement of matters affecting the well-being and progress of the industry as part of the national life." The constitution of the council provides that the membership shall consist of nominees of the Municipal Tramways and Transport Association and representatives of local authorities operating road passenger transport services, of road passenger transport service operators who agree to accept the constitution, of the Transport and General Workers' Union, of the National Union of General and Municipal Workers, and of such other unions as may be admitted by the council. There are no representatives of non-municipal operators on the council (i). Supervisory, administrative and clerical staffs, and other employees whose rates of wages and conditions of service are regulated by other agreements or awards do not come under the Joint Industrial Council. [447]

Revision of Agreements as to Wages and Conditions of Service.—Under the procedure adopted by the council applications for agreements or the revision of existing agreements of the council covering rates of wages and conditions of service are to be made to the council, and such agreements are to be of a national character. In the event of the council not reaching a decision within a specified period the matter is to be referred to the Industrial Court or such other body as may be agreed upon. [448]

Settlement of Disputes.—A standing committee is constituted to consider and report upon any disputes or differences which may arise out of any agreements made by, or decisions of, the council and (except as to applications for new agreements or revision of existing agreements) other disputes or differences which may be referred to them by the council. [449]

Emergency Committee.—An emergency committee selected from a panel of all the members of the council is available to investigate any local dispute, when requested to do so by either side, with a view to making a recommendation for a settlement. [450]

Works Committees.—Works committees composed of (a) representatives of the workpeople, and (b) representatives of the management are included in the constitution (*inter alia*), to provide means whereby the workpeople may be given wider interest in, and greater responsibility for, the local conditions under which their work is performed; to promote the welfare of the workpeople; to endeavour to maintain good relationship between them and the management; and to secure the observance of collective agreements entered into by the National Council. [451]

Report of Wages Tribunal.—By a decision and report of the tribunal,

(i) At June, 1938.

dated November 1, 1924, the local authorities' undertakings are grouped into classes for the purpose of standardisation of wages. Subsequent appeals to the National Council have modified the original grouping by a number of transfers of authorities from one group to another. [452]

Wages.—The wage rates laid down in the report of the tribunal of November 1, 1924, as subsequently modified by re-grouping referred only to tramway employees.

In June, 1936, a special committee, consisting of representatives of the National Joint Industrial Council for the Tramway Industry (as it then was) with the addition of representatives of omnibus undertakings, recommended an increase of wages of traffic and depot, etc., staffs, and set up an appeals committee to deal with appeals against the granting of an increase in wages either wholly or in part.

The Joint Industrial Council was reconstituted in March, 1937, and trolley vehicle and motor omnibus employees were included within its ambit. In December, 1937, an increase of wages was recommended to the constituent parties of the council for adoption with a right of appeal to the wages committee of the council. [453]

Agreement as to Conditions of Service.—An agreement dated 1937, which governs the conditions of service of employees of undertakings operating tramways, trolley vehicles and motor omnibuses has been reached by the council. The matters dealt with in the agreement are : guaranteed working week, hours of work, spreadovers, overtime, special rates of pay, annual holidays with pay, hours of work and overtime rates of depot and garage staffs. [454]

Trolley Vehicles.—A special Act of Parliament is necessary for the operation of a trolley vehicle system, and as such a system is closely analagous to a tramway system it is the practice to incorporate appropriate provisions from tramway enactments into Acts authorising trolley vehicle systems. The procedure to be followed in the promotion is similar to that for private bills for tramways, with the variations necessary by reason of the fact that no tramway lines are involved. A copy of the map must also be deposited with the M. of T. showing in figures the width and gradient of the carriageway at intervals along each route including the narrowest width and the steepest gradient on each route (indicating lengths). A trolley vehicle bill belongs to the first class (S.O.1). [455]

The following provisions from the Tramways Act, 1870, are commonly incorporated in the Special Act, viz. : Part II. (relating to the construction of tramways), except sects. 25, 28 and 29, and Part III., sects. 41, 46, 47, 49, 51, 53, 55—57, 60 and 61, general provisions dealing with discontinuance of tramways, bye-laws, penalties, licensing, recovery of tolls, penalties, etc., and reserving powers of street and local authorities. In addition the Act or order embodies specific provisions usually found in tramways Act and orders, relating to the following :

Motive power (the trolley vehicles may be moved by mechanical power subject to the provision that the mechanical power shall not be used except with the consent of, and according to a system approved by, the M. of T.).

Conveyance of passengers, parcels and dogs.

Passengers' luggage.

Stages and fares.

Through vehicles.

Power to reserve vehicles for special occasions.

Working agreements.
Conveyance of mails.
Starting and stopping places.
Signs indicating stopping places.
Workmen's services.

It is the practice of Parliament when conferring upon a local authority powers to establish a trolley vehicle system to provide that subsequent extensions of that system may be authorised by means of provisional orders made by the M. of T. and confirmed by Parliament.

The procedure in the case of such an application is laid down in the relevant Act conferring the original powers. [456]

Memorandum on the Form, Construction, Dimensions and Weight of Trolley Vehicles and their Electrical Equipment. M. of T. Regulations and Bye-Laws.—The Acts and orders authorising the construction of trolley vehicle routes generally contain provisions to the effect that the trolley vehicles and the electrical equipment thereof used under the authority of the Act or order shall be of such form, construction, weight and dimensions as the M. of T. may approve and that no trolley vehicle shall be used which does not comply with the requirements of the Ministry.

The procedure to be followed by trolley vehicle undertakers when applying under these provisions for the Minister's approval to the proposed design of trolley vehicles is contained in Appendix I. of a memorandum issued by the M. of T.

A closer control covering the design and equipment of the vehicles is exercised than is provided for in the case of the carriages used on tramways and light railways, and the requirements are set out in Appendix II. of the Memorandum referred to in great detail from the technical aspect. The actual design of the vehicles may vary to some extent according to the prevailing conditions on the routes on which the vehicles are proposed to be used, and the circumstances of the particular undertaking concerned. [457]

Regulations and Bye-Laws Regulating Use of Electrical Power.—The Minister is also generally required by the Acts and orders authorising trolley vehicle routes to make regulations for regulating the use of electrical power, and for securing to the public all reasonable protection against danger arising from the use of mechanical or electrical power for the trolley vehicles. The Minister is further empowered to make bye-laws for the purpose of such matters as regulating the use of bells or other warning apparatus fixed to the trolley vehicles; providing that the vehicles shall be brought to a stand at the intersection of cross streets and at such places and in such cases as he may deem proper for securing safety; regulating the entrance to and exit from and accommodation in the trolley vehicles; and providing for the protection of passengers from their machinery. These regulations and bye-laws are included in separate codes made in respect of each undertaking, and are printed and on sale as statutory rules and orders. [458]

Certification of Trolley Vehicle Routes.—In addition the relevant Acts and orders usually provide that mechanical or electrical power shall not be used except with the consent of and according to a system approved by the Minister, and that no trolley vehicle route shall be opened for public traffic until it has been inspected and certified to be fit for traffic by an officer appointed by him.

A Memorandum indicating the nature of the requirements made in

connection with such certification of routes is issued by the Minister (*k*) containing the requirements and recommendations relating to (a) the position of posts supporting the overhead conductors to prevent the possibility of road vehicles coming into contact with them, (b) clearances between the underside of bridges and the collector gear, and (c) the overhead electrical equipment, which in general follows electric tramway and light railway practice, with additional provisions for turning circles and a form of overhead construction of adequate strength. [459]

Accidents and Inquiries. *Notice of Accidents.*—By the Notice of Accidents Acts, 1894 and 1906 (*l*), as amended by the Factories Act, 1937 (*m*), it is provided that where there occurs in any employment to which the Acts apply, any accident which occurs to an employee involving either loss of life or such bodily injury as to prevent him from being employed at least one whole day at his ordinary work, the employer must as soon as possible, and in the case of a non-fatal accident, not later than six days after the occurrence, send to the M. of T. (*n*), notice in writing of the accident, specifying the time and place of its occurrence, the name and address of the person killed or injured, the work on which he was employed at the time of the accident, and the nature of the injury. The penalty for default is a fine on summary conviction not exceeding forty shillings. [460]

The employments scheduled to the Acts to which the enactment applies include the construction or repair of any railway, tramroad or tramway, and accordingly accidents occurring in any of the employments specified in the list are required to be notified to the M. of T.

The M. of T. also requires tramway and trolley vehicle undertakers to notify other classes of accidents occurring in the working of the undertakings, and holds inquiries into such accidents where it is deemed desirable to do so. [461]

(*k*) Memorandum on the Equipment of Trolley Vehicle Routes dated May, 1932, and issued by the M. of T.

(*l*) 11 Halsbury's Statutes 506; 12 Halsbury's Statutes 78.

(*m*) 30 Halsbury's Statutes 201.

(*n*) By the M. of T. Act, 1919; 3 Halsbury's Statutes 422, and the M. of T. (Board of Trade Exception of Powers) Order, 1919, the powers and duties of the Board of Trade under the Notice of Accidents Act, 1894, as amended, so far as those powers and duties related to railways, tramroads, tramways, canals, roads, bridges and vehicles on roads were transferred to the M. of T.

TRAMWAYS, RATING OF

See RATING OF SPECIAL PROPERTIES.

TRANSFER OF OFFICERS

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See also titles :

COMPENSATION FOR LOSS OF OFFICE ; RATING AND VALUATION ;	STAFF ; SUPERANNUATION.
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The financial arrangements arising from the transfer of officers are referred to in greater detail under the heading "Compensation for loss of office," whilst the relations between local authorities in consequence thereof are dealt with under the title SUPERANNUATION.

Tracing the history of the statutory provisions governing the transfer of officers it will be found that the L.G.A., 1888 (a), laid down a certain formula which will be found with modifications here and there in subsequent enactments. For example, sect. 119 of that Act uses these words : "... shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not been passed, and while performing the same duties, shall receive not less salaries or remuneration, and be entitled to not less pensions (if any), than they would have if this Act had not been passed. . ."

Reference to Review Orders made under sect. 46 of the L.G.A., 1929 (b) (see also sect. 146 of the L.G.A., 1933) (c), will show that the conditions of service of transferred officers follow almost identically those of the Act of 1888. [462]

Further, conditions of transfer usually provide that the council to whom an officer is transferred may distribute their business among the transferred officers in such manner as they may think proper and every officer shall perform such duties in relation to that business as may be directed by that council.

Again, the council to whom an officer is transferred may abolish the office or determine the appointment of any transferred officer whose office or appointment they may consider unnecessary subject nevertheless to the consent of the Minister as respects any officer who is removable only with the Minister's consent.

Another protection for the transferred officer gives him the right to relinquish his office within five years of his transfer in the event of his being required to perform duties which are not analogous to, or which are an unreasonable addition to, those which he was required to perform immediately before his transfer. [463]

(a) 10 Halsbury's Statutes 767.

(b) *Ibid.*, 916.

(c) 26 Halsbury's Statutes 384.

The ways in which the transfer of officers can be effected may be grouped for purpose of comparison under four heads :

1. *As the Result of the Abolition of an Existing Type of Authority or Body and the Transfer of the Powers and Duties either to a New Type of Authority or to an Existing Authority.*—Examples will be found in the L.G.A., 1888 (d), by which the officers and servants of the quarter sessions or general assessment sessions, or justices, or any committee of such sessions or justices, or of any committee of visitors for lunatic asylums, or of the Metropolitan Board of Works were transferred to county councils ; again in sect. 81 of the L.G.A., 1894 (e), reference is made to the subject of transfer. Coming next to more modern legislation attention may be drawn to the provisions of that part of the R. & V.A., 1925 (f), dealing with the abolition of the Overseers of the Poor. In the trend towards centralisation the passing of the L.G.A., 1929, witnessed the abolition of Boards of Guardians and the transfer to county councils and county borough councils of poor law officers (g), the transfer of road officers of rural district councils to county councils (h) and transferred registration officers (i).

Attention may also be drawn to the provisions of sect. 16 of the Electricity (Supply) Act, 1919 (j). [464]

2. *By Reason of the Alteration in the Status of Local Authorities and in Connection with the Review of County Districts.*—See sect. 46 of the L.G.A., 1929 (k), and sect. 146 of the L.G.A., 1938 (l). It may be appropriate to draw attention to the arrangements for filling vacancies in offices. Apart from the case of the Surrey County Council's review of county districts by which a "pool" of redundant officers with first claim to appointments under newly constituted authorities was set up, this practice does not appear to have been generally followed. Review orders in many cases contained provisions worded somewhat similar to the following :

It shall be the duty of any existing council who are affected forthwith to supply the county council with :

- (a) the name, description and rate of remuneration of any officer employed by them who will be transferred to another council or who by reason of an alteration of area is likely to become a redundant officer ;
- (b) particulars of any existing vacancies or of vacancies which are likely to arise either through an increase in the number of officers employed by the existing council or through the retirement of an officer employed by them.

Suggestions may be formulated before the appointed day by the county council after consultation with the existing councils for the employment by any council established or affected by the order of officers transferred or of officers who are likely to become redundant officers.

A copy of the suggestions formulated by the county council shall be sent before the appointed day to any council who are mentioned in the suggestions and as respects a new council the copy shall be sent to the person who acts as returning officer at the first election for communication to the new council.

(d) 10 Halsbury's Statutes 767.

(f) 14 Halsbury's Statutes 682.

(h) S. 120; *ibid.*, 961.

(j) 7 Halsbury's Statutes 764.

(l) 26 Halsbury's Statutes 384.

(e) *Ibid.*, 824.

(g) S. 119; 10 Halsbury's Statutes 960.

(i) S. 122; *ibid.*, 962.

(k) 10 Halsbury's Statutes 916.

It shall be the duty of the new council and any other council affected, if mentioned in the suggestions formulated by the county council or any additional suggestions made by the county council on or after the appointed day to take the suggestions into consideration in filling any vacancy in an office within twelve months of the appointed day.

These provisions shall not impose upon any person an obligation to accept an office which may be offered to him in pursuance of any suggestions of the county council and the refusal of any such office shall not be deemed a refusal to accept an office for the purposes of para. 1 of the Eighth Schedule of the Local Government Act, 1929 (*m*).

Upon the appointment to an office in pursuance of suggestions of the county council the following conditions of service of transferred officers, *i.e.* "relinquishment of office within five years after the appointed day" and "the application of the provisions of the Poor Law Officers Superannuation Act, 1896 (*n*), to officers transferred from one rating authority to another" shall continue to apply to the officer as if he had been transferred to the council by whom the appointment is made. [465]

3. *The Invitation by Advertisement and the Appointment of a Person in the Service of Another Local Authority.*—Prior to the passing of the Local Government Superannuation Act, 1937 (*o*), it was considered that the transfer of officers between one authority and another would be greatly facilitated by the introduction of legislation making superannuation compulsory and not optional as was the case under the provisions of the Local Government and Other Officers' Superannuation Act, 1922 (*p*). The Hadow Committee in fact commented on the need for compulsory superannuation as a means of removing what had been considered to be the greatest obstacle to the fluidity of transfer as between one authority and another. It may be too early to gauge the extent to which the transfer of officers by appointment to fill vacancies has grown by reason of the passing of the 1937 Act as compulsory superannuation did not come into being until April 1, 1939. [466]

4. *As the Result of Transfer of Functions from Local Authorities to Central Government Departments.*—Typical examples under this head will be found in sect. 51 of the Unemployment Act, 1934 (*q*), in which provision is made for the protection of the rights of officers of local authorities entering the service of the Unemployment Assistance Board and in sect. 26 of the Agricultural Act, 1937 (*r*), which gives certain rights to local authorities' officers who become civil servants in consequence of their transfer to the appropriate Government department. [467]

(*m*) 10 Halsbury's Statutes 987.

(*o*) 30 Halsbury's Statutes 385.

(*q*) 27 Halsbury's Statutes 799.

(*n*) 12 Halsbury's Statutes 949.

(*p*) 10 Halsbury's Statutes 883.

(*r*) 30 Halsbury's Statutes 64.

"TRANSITIONAL BENEFIT"

See "MEANS TEST."

TRANSPORT

See AMBULANCES; MOTOR VEHICLES ON HIGHWAYS; ROAD TRAFFIC.

TRANSPORT, MINISTRY OF

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Constitution and Power.—The M. of T. Act, 1919 (*a*), authorised His Majesty to appoint a Minister of Transport “for the purpose of improving the means of and facilities for locomotion and transport” and for that purpose to exercise any powers and discharge any duties relating to certain named matters which, being then in the hands of other departments, might be transferred from them by order in council to the Minister. The named matters were railways, light railways, tramways, canals, waterways and inland navigations, roads, bridges, ferries and the traffic thereon, harbours, docks and piers. In making the transfer the order might make it subject to exceptions and certain limitations (*b*). A separate department of the Ministry is charged with administration of the construction, improvement, maintenance and development of roads.

A series of orders in council followed, providing for the transfer to the new Ministry of powers of the Board of Trade, M. of H. and Road Board. The M. of H. had just come into existence and all the powers and duties of the old Local Government Board had passed to it (*c*). This passage took effect on July 1, 1919: but a little later these duties in relation to the named matters and also those which were in the hands of the Board of Trade were, subject to specified reservations, transferred to the M. of T. (*d*). [468]

In addition to these old powers and duties, which the Minister acquired by transference, Parliament invested him, by way of original grant, with certain others. He can compel local authorities—on such terms as he thinks fit—to run “through” services if their tramways adjoin (*e*). He can, subject to Treasury consent to his expenditure, run transport services himself or by appointed agents (*f*). He was given power as a Court of Appeal against the restriction of traffic by bridge owners who say that their bridge is insufficient to carry it (*g*).

Subject to Treasury approval, the Minister may make advances (by grant, or loan, or by both in combination) to any local authority or other person for the construction, improvement or maintenance of railways, roads, bridges or ferries, and for the promotion or improvement of transport services by land or water; but he may not, without a resolution of the House of Commons, make an advance of more than £1,000,000 at any one time for the purpose of any work (*h*). For the purpose of making, or considering, these grants, he may classify roads

(*a*) 3 Halsbury's Statutes 422.

(*b*) S. 2 (1) (ii.), (iii.); 3 Halsbury's Statutes 422.

(*c*) M. of H. Act, 1919, s. 3; *ibid.*, 417.

(*d*) S.R. & O., 1919, No. 1440, later amended by S.R. & O., 1922, No. 356; S.R. & O., 1919, No. 1441 and No. 1442: see Pratt and Mackenzie on Highways (1932), pp. 647 *et seq.*

(*e*) M. of T. Act, 1919, s. 5; 3 Halsbury's Statutes 427.

(*f*) *Ibid.*, s. 9; 3 Halsbury's Statutes 431. This power has not been exercised.

(*g*) *Ibid.*, s. 11. See title ROAD TRAFFIC.

(*h*) M. of T. Act, 1919, s. 17 (1); 3 Halsbury's Statutes 435.

as he thinks fit. Roads are classified by the Minister on the application of the highway authority. He may defray half the charge of the salary and establishment of local authorities' road surveyors (*i*). [469]

A general power to hold inquiries for the purposes of the Act is given to the Minister; and his officer who holds these inquiries may administer an oath and compel the attendance of witnesses (*k*). He is advised in relation to the discharge of his functions concerning transport by the Transport Advisory Council constituted under the Road and Rail Traffic Act, 1933 (*kk*). Other advisory committees are established to give "advice and assistance" to the Minister (*l*). Nothing in the Act authorises the Minister to impose any conditions on a local authority which shall entail expenditure without consent of such authority or of the M. of H. (*m*).

The Act provides for the Minister's staff and remuneration (*n*); and enables him and his secretaries to be elected to, and sit and vote in, the House of Commons (*o*). He may sue and be sued in the name of his office, and costs may be awarded to or against him (*p*). He is responsible for the acts of his officers, servants and agents (*p*). [470]

The Road Fund.—The Roads Act of 1920 added much to the M. of T. Act. It was not passed until the Finance Act of 1920 had imposed a new scale of duties on mechanically propelled vehicles. It made county and county borough councils the collectors of the new taxes on these vehicles; and the councils were directed to pay them into the Exchequer and the Exchequer to pay them out to a fund called the Road Fund which was controlled by the M. of T. (*g*). Certain preliminary charges were laid on the Road Fund, but subject to these, he was directed, in substance, to use it for road development (*r*). Thus the Road Fund was built up and the Minister became the controller of a very large annual revenue (*s*). Annual reports on the administration of the Road Fund are presented to Parliament. [471]

The Ministry and Local Authorities.—From the inception of the Road Board in 1909 the control exercised by the Board, and later by their successor the M. of T., in respect of the maintenance and improvement of highways by local authorities has largely been based upon the "power of the purse." With many local authorities the financial aspect of their dealings with the Board and the Ministry was the matter of prime importance, but gradually there has grown up a spirit of friendly co-operation between the government representatives and officers of local authorities, and the authorities themselves have gained a greater appreciation of the importance of the road system of the country in the

(*i*) M. of T. Act, 1919, s. 17 (2); 3 Halsbury's Statutes 435.

(*k*) *Ibid.*, s. 20; *ibid.*, 436.

(*kk*) See s. 46; 26 Halsbury's Statutes 870.

(*l*) *Ibid.*, s. 23; 3 Halsbury's Statutes 438.

(*m*) *Ibid.*, s. 24; *ibid.*, 439.

(*n*) *Ibid.*, s. 25; *ibid.*, 439.

(*o*) *Ibid.*, s. 27; *ibid.*, 440.

(*p*) *Ibid.*, s. 26; *ibid.*, 349.

(*g*) Roads Act, 1920, ss. 1—3; 19 Halsbury's Statutes 85—87. See, however, s. 33 (1) and Sched. III., Finance Act, 1936; 29 Halsbury's Statutes 772, 775, which altered the method of financing the fund and the charges thereon.

(*r*) *Ibid.*, s. 3 (4).

(*s*) The total income for the year to March, 1934, was over £25,500,000. See the figures in Mahaffy's "Highway Law, etc." (Arnolds, 1935), p. 63. The Road Fund Report of 1937—38 issued in 1939 showed payments on Revenue Account up to March 31, 1938, of nearly £19,000,000.

national interest so that the influence of finance has tended to recede into the background, although it is, of course, still there. This was encouraged by the change over from percentage grants in respect of the cost of maintenance of highways in counties and metropolitan boroughs to "block" grants which include contributions towards the cost of health and other services. Highway improvements are still the subject of percentage grants and also the maintenance of highways outside the counties and metropolitan boroughs. [472]

All improvement schemes in respect of which a local authority makes application for a grant must be submitted to the Minister, accompanied by plans, specifications and detailed estimates of cost, and approved by him before a grant is made. After the work is completed details of the actual cost are examined by officers of the Minister and only such items as are approved are allowed to rank for grant. [473]

The Minister is authorised to make grants towards the salary and expenses of the surveyor or engineer of local authorities and where this is done the qualifications and salaries of the officers concerned must satisfy the Minister, and the local authority may not dismiss the officer without the sanction of the Minister. [474]

By Circular No. 162 (Roads) August, 1922, the Minister invited highway authorities to make application (Form No. 163—Roads) for a contribution towards the salary of their surveyor or engineer, and intimated that, subject to the authority entering into an agreement with the Minister, in the form prepared by him, an annual contribution would be made upon the basis of 50 per cent. of so much of salary of the surveyor or engineer as is paid in respect of his duties in connection with the construction, improvement or maintenance of roads and bridges and is chargeable to the highways and bridges account of the council. Comparatively few highway authorities refused to make application, preferring to retain complete control of their officer. [475]

The Roads Improvement Act, 1925 (*t*), authorises the Minister to contribute towards the cost of planting trees or shrubs upon and the laying out of grass margins, also the putting up of notices, milestones, and sign posts, and the cost of freeing roads from tolls. [476]

The making of such grants enables the Minister to control the proposals of the authority. In addition, however, to the control of highway authorities exercised by the Minister in cases where a Government grant towards expenditure is involved, he exercises direct control in regard to a number of other matters. For instance the powers conferred upon a highway authority under the Restriction of Ribbon Development Act, 1935 (*u*); the power given to a local authority by the Ferries (Acquisition by Local Authorities) Act, 1919 (*a*), to acquire an existing ferry, applications under Part III. of the Road Traffic Act, 1930 (*b*), by a county, county borough or U.D.C. for an order to prohibit or restrict the user of any road by vehicles, and the power of a highway authority to continue to charge tolls in respect of any toll, road or bridge acquired by them, are all subject to the control of the Minister. [477]

Many of the powers conferred upon local authorities are subject to a right of appeal to the Minister and this gives him a large measure of additional control of the authorities. [478]

(*t*) 9 Halsbury's Statutes 219.

(*a*) 8 Halsbury's Statutes 660.

(*u*) 28 Halsbury's Statutes 79, 275.

(*b*) 28 Halsbury's Statutes 648.

An appeal to the Minister may be made against the temporary restriction or prohibition of traffic by a highway authority upon a road in their area. Where a local authority requires a public utility undertaker to remove excavated matter and barriers from a highway within a specified time, the undertaker may appeal to the Minister as to the reasonableness of the time allowed (London Traffic Act, 1924) (c). [479]

Under the L.G.A., 1929 (d), appeals in regard to disputes as to the delegation by a county council of the maintenance and improvement of highways; the release of an U.D.C. from the obligation to maintain; the manner in which roads are maintained by an urban council, and a request by an urban council to a county council that a road shall be declared a "county road" and maintained by the county lie with the Minister. [480]

The owner of a "structure" unauthorised by Act of Parliament set up on any road, is entitled to appeal to the Minister against a notice for its removal by a local authority. [481]

The powers of the Minister to make regulations and orders enable him to direct and control the actions of local authorities in relation to a number of matters. Under sect. 18, Road Traffic Act, 1934 (e), he may make regulations, requiring the council of every borough, urban district and county to submit a scheme for foot-passenger crossings, or a statement giving their reasons for considering such crossings unnecessary. Notwithstanding such statement the Minister may, after giving the authority an opportunity of making representations, require them to submit a scheme. The Minister may approve a scheme, either with or without modifications. Apparently once a scheme is submitted the Minister is entitled to modify it to any extent, and if the authority refuses or fails to carry out the approved scheme the Minister may do so and recover the cost from the council in default. In practice, however, the representations of a council are treated with great respect. There was some friction in regard to this matter in the early days, as some councils objected to the establishment of pedestrian crossings in their area, generally because they considered it essential that they should be directly illuminated after dark, a course which the Minister refused to adopt on the grounds of excessive cost. [482]

The Bridges Act, 1929 (f), relieves the private owner of a bridge, such as a railway or canal company, from any obligation to maintain their bridges which carry the highway, to a higher standard than necessary to enable a bridge to carry traffic as it was at the time of construction. If either the bridge owner or the highway authority considers a bridge dangerous or unsuitable for modern traffic, or that the responsibility for the road should be transferred from the owner to the authority, either may apply to the Minister for an order. The Minister after hearing both sides and after holding a local inquiry may make an order dealing with the matter. [483]

Under the Trunk Roads Act, 1936 (g), the Minister became responsible for all the more important main roads of the country, but with power, by agreement, to delegate any of his functions to the council of any county, borough or urban district. This has been done to a very great extent, but the councils act merely as agents of the Minister and are required to comply with his instructions. A council may contribute towards the costs incurred by the Minister in the construction or

(c) S. 5; 19 Halsbury's Statutes 177.

(e) 27 Halsbury's Statutes 547.

(g) 29 Halsbury's Statutes 183.

(d) 10 Halsbury's Statutes 883.

(f) 9 Halsbury's Statutes 268.

improvement of any trunk road, in which event the council would no doubt require to have a voice in regard to the design and execution of the works. [484]

If a council proposes to prescribe a "frontage line for buildings" on a classified road, their proposals must be submitted to the Minister and they must have regard to his comments; but if the Minister desires to carry out experiments upon a road—other than a "Trunk Road"—he must obtain the sanction of the council concerned (*h*). [485]

By the M. of T. Act, 1919 (*i*), the Minister was required to set up a road advisory committee. This body has since been superseded by the Transport Advisory Council set up under the Road and Rail Traffic Act, 1933 (*j*). [486]

London.—The London Traffic Act, 1924 (*k*), imposed upon the local authorities of the metropolis and of a wide area outside, the obligation to submit to the Minister, every half-year, a statement of their proposals for road maintenance and improvement which may, during their execution, involve closing one-third width of the carriageway. These statements are considered by the London Transport Advisory Committee who prepare a report, and the Minister having regard to the report, prepares a draft scheme prescribing when and over what periods the work may be carried out. The decision of the Minister, after he has considered any observations made by local authorities is final and must be observed by them in the execution of the work. [487]

(*h*) Roads Improvement Act, 1925; 9 Halsbury's Statutes 219.

(*i*) S. 22; 8 Halsbury's Statutes 488.

(*j*) See p. 218 and note (*kk*), and see s. 46 (11) of the 1933 Act and Sched. II. thereof for constitution of the council; 26 Halsbury's Statutes 911, 915.

(*k*) 19 Halsbury's Statutes 172.

TRAPS

*See also titles: HIGHWAY NUISANCES;
WILD BIRDS.*

Legislation with reference to traps has for its main objects the prevention of cruelty to animals, and the protection of wild birds. Traps fall into two classes, namely, apparatus used for the release from confinement of a bird or animal, and apparatus for the capture or killing of a bird or animal. The first class of trap is dealt with by the Captive Birds Shooting (Prohibition) Act, 1921 (*a*), which prohibits the promotion of, or participation in, any meeting, competition, exhibition, pastime, practice, display, or in any event whatever, at which captive birds are liberated by hand or by trap, contrivance or other means for the purpose of being shot at the time of their liberation; an offence is committed also by the owner, occupier or person in charge of premises who permits his premises to be used for such purpose; offences against the statute are punishable on summary conviction by a fine not exceeding £25, and, alternatively or in addition, by imprisonment for not more than three months. [488]

As to the second class of traps reference may be made to the Protection of Animals Act, 1911, s. 10 (*b*), which requires any person who

(*a*) S. 1; 1 Halsbury's Statutes 365.

(*b*) 1 Halsbury's Statutes 373.

sets or causes or procures to be set, any *spring* trap (c) for the purpose of catching, or which is likely to catch, any hare or rabbit, to inspect the trap, or to cause some competent person to inspect it, at reasonable intervals of time, and at least once daily between sunrise and sunset; and provides that failure to comply with these requirements is punishable on summary conviction by a fine not exceeding £5. [489]

The Ground Game Act, 1880, sect. 6 (d), prohibited (*inter alia*) the employment of *spring* traps for the purpose of killing ground game (e), except in rabbit holes (f); contravention of this provision rendered the offender liable, on summary conviction, to a fine not exceeding £2. This prohibition applied to persons who had the right of killing ground game under the Ground Game Acts or otherwise (g). The Prevention of Damage by Rabbits Act, 1939, sect. 5 (1) (h), supersedes sect. 6 of the Ground Game Act, 1880, and renders liable, on summary conviction, to a fine not exceeding £20 (or on a second or subsequent conviction, £50) any person who, for the purpose of killing hares or rabbits, uses or knowingly permits the use of a spring trap except in a rabbit hole; by virtue of sect. 5 (2) of the Act of 1939, the provisions of sect. 6 of the Act of 1880, noted above, cease to have effect. It will be observed that before a conviction can ensue, the Court must find that the spring trap was used for the purpose of killing hares or rabbits, and therefore the accidental taking of a hare or rabbit in a trap set for another purpose (*e.g.* the destruction of rats) would not render the user of the trap liable to conviction. [490]

As to the prohibition and restriction of the use of traps for taking wild birds, see title WILD BIRDS.

A trap which could be used for the purpose of killing or taking game, appears to be "an engine or other instrument for the purpose of killing or taking game" for the purposes of the Night Poaching Act, 1828, sect. 1 (i), and the Game Act, 1831, sects. 3, 13 and 23-(j); it may also be "a snare or engine" within the meaning of the Larceny Act, 1861, sect. 17 (k), relating to the killing or taking of hares or rabbits in warrens (l); and such a trap may also be "a net or engine" within

(c) The use of spring traps, particularly the usual rabbit trap with serrated jaws, has given rise to much controversy both within and outside Parliament. Details of humane snares which, it is claimed, are as efficacious as the spring trap for the taking of hares and rabbits, can be obtained from the Royal Society for the Prevention of Cruelty to Animals.

(d) 8 Halsbury's Statutes 1096.

(e) *I.e.* hares and rabbits (Ground Game Act, 1880, s. 8); 8 Halsbury's Statutes 1099.

(f) In Scottish cases cited at 56 J. P. N. 628, it was held that "rabbit hole" means the underground and roofed-in burrow, and does not include "scrapes" outside the burrow or under a wire-netting fence.

(g) Despite the generality of the words of s. 6, the prohibitions contained in it applied only to a tenant entitled by the statute to take ground game, or entitled because his landlord had not reserved the right of shooting (*Saunders v. Pitfield* (1888), 52 J. P. 694; *Waters v. Phillips* (1910), 74 J. P. 343). The owner of the land, *semble*, whether in occupation or not, was not affected by s. 6 (*Smith v. Hunt* (1885), 50 J. P. 279), nor was a person authorised, by grant or licence from the landowner, to kill hares and rabbits (*May v. Waters* (1910), 74 J. P. 125; *Leworthy v. Rees* (1913), 77 J. P. 268). Clearly a trespasser or other person who could make no claim of right was not within the ambit of the section.

(h) 32 Halsbury's Statutes 81.

(i) 8 Halsbury's Statutes 1063.

(j) *Ibid.*, 1066.

(k) 4 Halsbury's Statutes 542.

(l) Note the distinction between taking at night (a misdemeanor) and taking by day (a summary offence), and also the exception as to sea banks and river banks and Lincolnshire.

sect. 2 of the Poaching Prevention Act, 1862 (search of suspected persons). [491]

The setting of a spring gun, man-trap or other engine calculated to destroy human life or to inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, is a misdemeanor punishable under the Offences against the Person Act, 1861, sect. 31 (*m*); and a person knowingly permitting the setting of such a trap is deemed to have set the trap; but nothing in this section makes it illegal to set any trap usually set with the intention of destroying vermin, nor does the section prohibit the setting between sunset and sunrise of a spring gun, etc., within a dwelling-house for the protection thereof. The killing of a human being by a trap set in contravention of the section may amount to manslaughter (*n*). [492]

(*m*) 4 Halsbury's Statutes 608.

(*n*) *R. v. Heaton* (1896), 60 J. P. 508.

TREASURER

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See also titles : APPOINTMENT AND DISMISSAL OF OFFICERS ;
DUTIES AND POWERS OF OFFICERS ;
FINANCIAL OFFICER.

General Note.—The office of treasurer is a statutory one and the appointment of a fit person to fulfil the duties of the office is a compulsory requirement under the L.G.A., 1938, except in the case of parish councils.

The following sections set out the position in regard to different types of local authority, together with a statement of certain common requirements.

Qualifications for Office.—No qualification is prescribed by law beyond the requirement to appoint a "fit person," nor is any control exercised over the making of appointments by any Government department.

It was formerly a common practice for local authorities to appoint as their treasurer the local manager of the bank at which the account of the authority was kept, no remuneration being paid apart from the usual bank charges for management of the account. The practice declined following the decision in *A.-G. v. De Winton* (*a*), and where it

does still persist the appointment is not of the bank manager but of the banking company. Having regard to the requirements of the office, and in particular the necessity for access to the books of account of the local authority in order to comply with them, there appears to be some doubt as to the validity of this procedure. It has been suggested by analogy from the position of officers of friendly societies that a banking association is not eligible if there are any duties to be performed personally. This is based on the decision in *Re West of England and South Wales District Bank, Ex parte Swansea Friendly Society (b)*. Such appointments as now exist are usually found amongst authorities other than boroughs where the council is the incorporated body. See "Special position of the Treasurer"; note also "London. County Treasurer," *post*, p. 221.

Where the statutory office is in fact filled by a banking association, the duties of the office are carried out by an officer of the local authority designated accountant, chief financial officer, comptroller, etc. [498]

The person appointed by the local authority to perform the duties of the office, with or without the statutory title, is usually required to produce evidence of capacity for the post by virtue of past experience and membership of one or more professional accountancy bodies.

Such evidence, with particular reference to membership of the Institute of Municipal Treasurers and Accountants, is increasingly required even in the case of the smaller local authorities.

The office of treasurer cannot be held jointly by the clerk nor by a person who stands in the relation of partner, employer or employee to the clerk (*bb*). [494]

Appointment to, Tenure of, and Removal from, Office.—It has already been stated that save in the case of parish councils it is incumbent upon a local authority to appoint a treasurer. A vacancy in the office must be filled in the case of a county council within four months (*c*) and in the case of a borough council within twenty-one days (*d*). There is no corresponding requirement in the case of a district council.

There are no other statutory requirements as to appointment which differ from those applicable to other officers. See title APPOINTMENT AND DISMISSAL OF OFFICERS.

The person appointed by the local authority holds office during their pleasure (*e*), but a provision may be inserted in the terms of the appointment requiring a specified and reasonable notice (*f*).

The provision as to holding office during the pleasure of the council does not affect the right or obligation of the treasurer to retire from office in pursuance of the requirements of a scheme relating to superannuation allowances. [495]

The right to superannuation is now governed by the L.G. Superannuation Act, 1937 (*g*), which effectually brings within the scope of superannuation all persons actually in the employ of a local authority occupying the position in question.

(b) (1879), 11 Ch. D. 768; 18 Digest 850, 887. See 21 Halsbury (2nd ed.), 138.

(bb) L.G.A., 1938, s. 102 (4), 106 (5), 107 (4); 26 Halsbury's Statutes 360, 362.

(c) *Ibid.*, s. 102 (3); *ibid.*, 360.

(d) *Ibid.*, s. 106 (3); *ibid.*, 362.

(e) *Ibid.*, s. 102 (2), 106 (2), 107 (2); *ibid.*, 360, 362.

(f) *Ibid.*, s. 121; 26 Halsbury's Statutes 370.

(g) 30 Halsbury's Statutes 387.

During his tenure of office, a local authority, other than a parish council must take, or require the treasurer to give, sufficient security for the faithful execution of the office and for accounting for moneys entrusted to him (*h*). Such security is usually in the form of a fidelity guarantee bond entered into with the local authority's insurers. [496]

Powers and Duties. County Treasurer.—Briefly stated the statutory duties of the county treasurer are :

- (i.) To receive and account for all moneys due to the county fund, including county rates (*i*).
- (ii.) To make and account for payments from the county fund on the order of the county council; or of a competent court including a justice of the peace acting in a judicial capacity. A payment in pursuance of a specific statutory requirement does not require an order of the county council (*k*).
- (iii.) To make financial returns to quarter sessions and county boroughs in regard to costs at sessions and assizes and to certify local financial returns.
- (iv) To make up his accounts annually and submit them to the district auditor of the M. of H. [497]

In accounting for sums received and paid the treasurer must distinguish between general and special county purposes (*n*).

The implications of these duties are far reaching and in practice the treasurer, if an actual employee of the local authority, is their financial adviser, the terms of whose appointment usually include supervision of all financial and accounting matters even if work relating to them is carried out in executive departments. [498]

Borough Treasurer.—The borough treasurer is responsible for the general rate fund of the borough and all payments to or from the fund must be made to or by him (*o*).

What has been said as to the implications of statutory duties in the case of the county treasurer, apply with equal force to the borough treasurer. In his case indeed, he is frequently responsible for the financial administration of large estates and revenue producing undertakings sometimes of great magnitude. [499]

The relationship of the borough treasurer to the borough council and to the burgesses as a whole has been the subject of an important legal decision. It was held in *A.-G. v. De Winton* (*p*) that the treasurer was not merely the servant of the council, but, as custodian of the borough funds, owed a duty and stood in a fiduciary position to the burgesses as a body and could not plead the orders of the council for an unlawful act. The implications of this decision are discussed in the following section—"Special Position of the Treasurer."

The personal responsibility of the borough treasurer is also stressed by the decision in *R. v. Frost* (*q*) where a *mandamus* was refused to a burgess seeking to compel the mayor to account for rents of corporate lands. The refusal was based on the view that the proper person to take action was the treasurer. [500]

(*h*) L.G.A., 1933, s. 119; 26 Halsbury's Statutes 369.

(*i*) *Ibid.*, s. 184 (1); *ibid.*, 406.

(*k*) *Ibid.*, s. 184 (2); *ibid.*

(*n*) *Ibid.*, s. 181; *ibid.*, 405.

(*o*) *Ibid.*, s. 187 (1); *ibid.*, 408.

(*p*) [1906] 2 Ch. 106; 33 Digest 77, 497.

(*q*) (1838), 8 Ad. & El. 822; 38 Digest 80, 514.

Treasurer of U.D.C. and R.D.C.—Although the office of treasurer is statutory and appointment compulsory (r), there are no statutory provisions as to duties attached to the office.

In the past, particularly in the case of smaller authorities, the appointment of a banker as treasurer was general. With extension of functions there has been an increasing tendency to appoint separate financial officers and to ally the statutory title to such appointments. This development was accelerated by the elimination of many small authorities in consequence of the first review of county districts under the L.G.A., 1933. [501]

Treasurer of Parish Council.—Parish councils are not compelled to appoint a treasurer, but they may appoint a member or some other fit person to be treasurer, without remuneration (t). If such an appointment is made the parish council must either require the officer to give, or themselves take, such security for the faithful execution of his office, as the county council may direct (u). [502]

Special Position of the Treasurer.—Reference has been made to the decision in *A.-G. v. De Winton* (a) that the borough treasurer holds a fiduciary position, but it is not clear whether the same obtains as regards the treasurer of other local authorities, though it would seem to apply to the treasurers of county councils by and to whom all payments in and out of the county fund are to be paid. A borough is a common law corporation acting through the agency of an elected council. The incorporated body is the mayor, aldermen and burgesses of the borough and the treasurer is an officer of the corporation. In the case of other local authorities, however, the incorporated body is the council who appoint the treasurer. His powers in relation to the funds of the authority are defined by statute and save for certain exceptions, payments from the funds of the authority can only be made on the order of the council.

It would appear, however, in view of the strict divorce of the functions of clerk and treasurer and the inability of anyone other than the employee of the local authority to comply with statutory requirements as to certification of returns and preparation and publication of accounts, that the office of treasurer should be a personal one.

It seems, moreover, in view of the complexity of the financial work of any local authority, imperative that the treasurer should be given the widest powers to advise the council and other officers in all financial matters. Only so can he possess the independent knowledge commensurate with the responsibilities implied by a fiduciary position. [503]

London. County Treasurer.—Under the London Government Act, 1939 (b), the L.C.C. must appoint a fit person, not a member of the council, to be treasurer, to hold office during the pleasure of the council, the office to be filled within four months of a vacancy. The treasurer may not be the same person as the clerk (c). Security must be required, and such reasonable remuneration may be allowed, as the council may determine (d). Officers must pay all money due from them to the treasurer or as the council direct, and submit their accounts (e). The Westminster Bank, Ltd., act as county treasurer. As to the duties of the office, see title FINANCIAL OFFICER. [504]

(r) L.G.A., 1933, s. 107; 26 Halsbury's Statutes 107.

(t) *Ibid.*, s. 114 (4); *ibid.*, 367.

(a) See note (p), *ante*, p. 220.

(c) S. 72; *ibid.*, 295.

(e) S. 87; *ibid.*, 300.

(u) *Ibid.*, s. 119 (4); *ibid.*, 369.

(b) S. 71; 32 Halsbury's Statutes 295.

(d) Ss. 71, 86; *ibid.*, 293, 300.

Metropolitan Borough Councils.—Borough treasurers are appointed by virtue of the London Government Act, 1939 (f), which obliges the borough council to appoint a borough treasurer and other specified officers, and authorises the appointment of such other officers as is considered necessary and the payment of reasonable remuneration. The treasurer and the clerk may not be the same person. All payments to and out of the general rate fund of the borough are to be made to and by the borough treasurer (g). [505]

City of London.—See title CITY OF LONDON.

(f) S. 76 ; 32 Halsbury's Statutes 296.

(g) S. 122 ; *ibid.*, 316.

THE TREASURY

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Historical Introduction.—The Treasury is the state department which controls the management, collection and expenditure of the public revenue. Its functions are derived from the ancient Court of Exchequer, a division of the *curia regis* of which the chief officer was the Treasurer—usually an ecclesiastic—who, during the reign of Elizabeth became the most prominent official in the state. Its present constitutional condition represents that ancient office which was first placed in commission in 1612 and since 1714 has permanently remained so.

The correct official title of the Treasury is “the Lords Commissioners of His Majesty’s Treasury.” The First Lord of the Treasury is normally the Prime Minister but the *de facto* head is the Chancellor of the Exchequer—the Second Lord—who by a separate patent is also created Under Treasurer. The remaining commissioners are known as junior Lords of the Treasury, and with the Prime Minister and the Chancellor of the Exchequer they constitute a Board of Treasury.

The ancient Exchequer (*Scaccarium*) was divided into an Upper Exchequer and a Lower Exchequer: the former constituted a court for the audit and management of the royal revenues; and the latter was an Exchequer of receipt, concerned only with the actual receipt and issue of moneys.

The modern Treasury is connected more directly with the duties of the Lower Exchequer, but it is interesting to note that the accountant

section of the Treasury is still responsible for the audit of the sheriffs' accounts.

The historical interest of a state department whose origin can be traced directly back to the year 1118, is naturally very great, but other authorities should be consulted on this aspect of the subject. The earliest description of the Exchequer is contained in the *Dialogus de Scaccario* (1177) written by Richard, Bishop of London, who was an ex-Lord Treasurer; a more modern reference is "Antiquities of the Exchequer" by Hubert Hall. In this connection it may be permissible to refer to two matters only: first, that a still earlier name for the Exchequer was the "Tallies," a name derived from the use of notched sticks cleft in two—one part being given as a receipt for the payments made by sheriffs and other accountants at the court, and subsequently used as a voucher for production at the court for identification with the counterpart. The use of these tallies continued at the Treasury until 1826. The second matter is that the Exchequer derived its name from the chequered cloth covering the table, round which meetings of the court were formerly held, and which was used in the same way as an abacus for calculation with counters. [506]

The Position of the Treasury in relation to Local Administration.—The normal functions of the Treasury involve no responsibility or jurisdiction in regard to local administration. There are, however, important financial relations existing between the central Government and local authorities, and the associations of the Treasury with local administration arise, in the main automatically, out of those financial relations. [507]

Rating.—Crown property is exempt from local rates but since 1859 contribution by way of bounty in lieu of rates has been paid, and since 1874 this contribution has been the actual equivalent of local rates, on a valuation fixed by the Treasury valuer, as far as possible on the same principles as are applicable to the valuation of ordinary rateable properties. The vote of Parliament governing these contributions in lieu of rates is accounted for to Parliament by the Treasury itself. [508]

Exchequer Grants.—The Treasury is necessarily involved in any contribution made by the central Government towards the cost of local government services and all such grants are subject to a measure of Treasury regulation, even although the issue of the grant and the supervision of the service concerned is in the hands of another Government department. Thus education, police and housing grants and grants made by the Unemployment Grants Committee are all subject to a certain measure of control by the Treasury. In the case of the general Exchequer contribution, sect. 108 of the L.G.A., 1929 (a), provides that the time and manner of the payment of the grants under Part VI. of that Act shall be subject to Treasury direction. Moreover, the Treasury is required by Finance Act, 1936 (b), to make regulations governing the payment out of the road fund of the annual contribution from that fund towards the general Exchequer contribution.

The Treasury is directly accountable to Parliament for the vote in respect of expenses under the Representation of the People Act, although the work of preparing the list of electors is supervised by the

(a) 10 Halsbury's Statutes 948.

(b) S. 33; 29 Halsbury's Statutes 772.

H.O. and the share of the local authorities in the cost of this work is certified by that department (c). [509]

Borrowing.—The Treasury was formerly a loan sanctioning authority, e.g. in respect of applications made under the Municipal Corporations Act, 1882 (d), and under the same Act was empowered to issue directions to local authorities as to how the proceeds of the sale of corporate land were to be dealt with—a related subject. These functions have now passed through the Local Government Board to the M. of H.

In the exploitation of new methods of borrowing by local authorities, the Treasury has been called in to co-operate with the authorities and the consequent relationship has been of considerable advantage to the authorities, whilst enabling the Treasury to watch the interests of the Government in the money market, both as a borrower and as the guardian and protector of the national interests in regard to finance. [510]

Stock Issues.—Thus, the first issue of stock by a local authority—the old Metropolitan Board of Works, predecessors of the L.C.C.—was made under terms and conditions which were subject to close control by the Treasury. [511]

Money Bills.—In the same way, when local authorities obtained powers to issue bills, the powers had to be exercised under Treasury control. In this matter it would seem that the Government interests are very directly affected because, since 1918, no new powers to issue bills have been conferred upon local authorities, as a result of the persistent opposition of the Treasury to any extension of the authority. [512]

Municipal Banks.—Opposition by the Treasury also succeeded for many years in preventing the extension to other local authorities of the powers to establish a municipal savings bank which were conferred upon Birmingham in 1918, and when, in 1930, powers were granted to Cardiff and Birkenhead, the condition of strict control by the Treasury over such fundamental questions as the rate of interest to be paid on deposits, and the general regulations governing the operations of the bank, was imposed. See title MUNICIPAL BANKS. [513]

Housing Bonds.—The Housing Act, 1936, sect. 122 and Sched. IX., provide that the rate of interest payable on local housing bonds shall be fixed by the Treasury and adjusted from time to time as they may consider desirable (e). [514]

Regulation of Stock Issues.—In recent years, the Treasury has undertaken, through the agency and influence of the Government broker on the Stock Exchange, the regulation of all stock issues by local authorities. The regulation affects both the time, and, within certain limits, the terms of issue. This control has been criticised on the grounds that individual authorities may be deprived of the advantage of their superior credit in the money market; but it is accepted as being, on the whole, a beneficent control. Mr. McKenna, an ex-Chancellor of the Exchequer, addressing the Institute of Municipal Treasurers and Accountants in 1936, referred to this control as “a part of the whole trend of development towards a more efficient regulation of the

(c) See Representation of the People Act, 1918, ss. 15, 29; 7 Halsbury's Statutes 557, 565.

(d) 10 Halsbury's Statutes 576.

(e) 29 Halsbury's Statutes 652, 696. See also Treasury Minute of December 29, 1938; S.R. & O., 1938, No. 1579.

nation's monetary affairs. . . . The interests of local authorities themselves require that undue strain upon the capital market, resulting in higher costs of borrowing, shall as far as possible be avoided. The interests of industry demand that the developments of private enterprise shall secure its full share of the nation's capital resources. I say nothing of the interests of the Government as the greatest borrower of all." [515]

Public Works Loan Board.—By the establishment of the Public Works Loan Commissioners (f) it was intended that loans for public works should be granted by a body independent of the Government of the day, and removed from the sphere of political influence generally, and the commissioners are consequently not subordinate to, or in any sense a branch of, the Treasury; but they act in accordance with general rules laid down by the Treasury and are required by statute to submit an annual report to that department. The Financial Secretary to the Treasury is required to answer questions in Parliament relating to the commissioners. [516]

Miscellaneous. *Sunday Entertainments Act, 1932.*—The cinematograph fund established under the Sunday Entertainments Act, 1932 (g), is under the direction and control of the privy council. The Treasury is charged with the duty of certifying the sum to be charged against the fund for expenses incurred by the privy council in its administration. Accounts under the Act are to be kept in the way directed by the Treasury. [517]

The Treasury and the L.C.C.—Special relations between the Treasury and the L.C.C. began with the issue of stock by the council's predecessors under the Metropolitan Board of Works (Loans) Act, 1869, and have continued since that time in much the same form. In 1875 began the annual money bills which were a feature of the board's finance, and which were sent to the Treasury for approval and introduced by the Treasury as public bills. Soon after the passing of the L.G.A., 1888, under which the L.C.C. superseded the Metropolitan Board of Works, there was a proposal to transfer to the Local Government Board the financial control hitherto exercised by the Treasury, but the council objected and the proposal was dropped. After 1892, however, the annual money bill was introduced as a private measure. [518]

(f) See Public Works Loans Act, 1875, s. 4; 12 Halsbury's Statutes 255.

(g) 25 Halsbury's Statutes 921.

TREES, HEDGES AND FENCES

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See also titles :

DESTRUCTIVE INSECTS AND PESTS ; PLANTING OF TREES ; ROAD AMENITIES ;		ROAD MAKING AND IMPROVEMENT ; TOWN AND COUNTRY PLANNING.
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Introduction.—In this title reference will be made to : (1) the statutory powers of local authorities to control or remove trees and hedges, (2) the powers and duties of local authorities with regard to fallen or dangerous trees on or adjoining highways, and the responsibilities at common law, with regard to trees, of highway authorities and of private persons. For the powers and duties of local authorities as to the planting and care of trees, see titles PLANTING OF TREES and ROAD AMENITIES, and for functions as to diseases of trees, see title DESTRUCTIVE INSECTS AND PESTS. [519]

Statutory Powers of Control.—So long ago as 1285, it was enacted by the Statute of Winchester that bushes and undergrowth, “whereby a man might lurk to do hurt,” should be removed for a distance of two hundred feet on each side of a highway leading from market town to market town, but for practical purposes a summary of the statute law on the question of trees growing on or adjacent to highways, may commence with the Highway Act, 1835 (*a*). It should be noted, however, that somewhat similar provisions to those noted below were contained in the Highway Act, 1773 (*b*), and were applied to county bridges (including the approaches thereto) by the Bridges Act, 1803 (*c*), and, as so applied, remain unrepealed. In appropriate cases, reference should be made to sects, 6, 7, 13, and the Schedule (Form 11) of the Act of 1773 (*d*). As to the meaning of the term “county bridge,” see title BRIDGES. [520]

Sect. 64 of the Highway Act, 1835 (*e*), prohibits the planting of any tree, bush or shrub on any carriageway or cartway, or within fifteen feet from the centre (*f*) thereof ; any tree, bush or shrub so planted must be removed by the owner or occupier of the land within twenty-one days from notice by the surveyor (now the highway authority to which the functions of the surveyor of highways have been transferred) ; and a penalty of ten shillings is recoverable in case of default. [521]

(*a*) 9 Halsbury's Statutes 50.

(*b*) *Ibid.*, 239.

(*c*) *Ibid.*, 255.

(*d*) *Ibid.*, 239, 242, 253.

(*e*) *Ibid.*, 81.

(*f*) The centre of the highway is deemed to be a point or line equidistant from the edges of so much of the highway as has been maintained with stones or other materials for twelve months previously (Highway Act, 1835, s. 63 ; 9 Halsbury's Statutes 80).

Sect. 65 of the Highway Act, 1835 (*g*), provides that (a) if the surveyor (of highways) thinks that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees (except those trees planted for ornament or for shelter to any hop-ground, house, building or courtyard by the owner thereof) growing in or near such hedges or other fences, so as to exclude sun and wind from the highway to the damage thereof, or (b) if any obstruction is caused in any carriageway or cartway by any hedge or tree, the owner (*h*) of the land on which such hedge or trees are growing may be summoned, on the application of the surveyor, to show cause before justices in petty sessions (*i*) why the said hedges are not cut, pruned or plashed, or such trees not pruned or lopped, so as not to exclude sun and wind or so as to remove the obstruction; that the justices may order the requisite cutting, pruning, plashing or lopping, or the removal of the obstruction, and in default of compliance within ten days after service of the order (*k*) of the justices, a conviction and the imposition of a penalty not exceeding forty shillings may ensue; and that if the order of the justices is not obeyed, the surveyor is required to carry out the work ordered, and is empowered to recover summarily from the owner the cost of so doing, so far as such cost exceeds the penalty imposed by the justices. [522]

Protection is given to owners by sect. 66 (*l*) which limits the compulsory cutting or pruning of hedges to the period between the last day of September and the last day of March; also the felling of timber growing in hedges is only to be required when the highway is ordered to be widened or enlarged under sect. 82 (*m*) or sects. 47 and 48 of the Highway Act, 1864 (*n*), and, in such case, oak trees growing in the highway or hedges may only be felled in April, May or June, and ash, elm and other trees in December to March inclusive. [523]

Sect. 66 does not apply to all the operations which may be ordered under sect. 65, and where a tree is found by the justices to be an obstruction to a highway which is a carriageway or cartway, or to be a danger to the public using such highway, the removal at any time may be ordered (*o*). Any notice, information or order under sect. 65 must set out with precision the works required and refer to the trees or hedges concerned in such manner as to enable them to be identified, and must specify what is the obstruction, danger or injury to the highway giving rise to the proceedings (*p*). The powers of the surveyor under sect. 65 are now vested in the highway authority. [524]

The Highway Act Amendment Act, 1885 (which extends to the counties of Wilts, Dorset, Somerset, Devon and Cornwall only) provides, by sect. 2 (*q*) that if any highway board (now the county council or other

(*g*) 9 Halsbury's Statutes 81.

(*h*) The word "owner" includes "occupier"; Highway Act, 1835, s. 5; 9 Halsbury's Statutes 50.

(*i*) The court of petty sessions is substituted for the special sessions for the highways, by the Highway Act, 1864, s. 46; 9 Halsbury's Statutes 69.

(*k*) The order may be served on the owner or on his steward or agent.

(*l*) 9 Halsbury's Statutes 82.

(*m*) *Ibid.*, 94.

(*n*) *Ibid.*, 158, 160. As proceedings under the sections mentioned involve compensation to the owner of the land, there is no object in protecting his hedgerow trees, except to preserve their value as timber. There is nothing to prevent an owner from agreeing to waive his protection under the Highway Act, 1835, s. 66; 9 Halsbury's Statutes 82.

(*o*) *Bullen v. Wakely* (1898), 62 J. P. 166; 26 Digest 450, 1662.

(*p*) *Jenney v. Brook* (1844), 6 Q. B. 323; 26 Digest 388, 1157.

(*q*) 9 Halsbury's Statutes 191.

authority exercising the functions of a highway board) is of the opinion that any highway is prejudiced by the shade of any hedges or by any trees or other things growing in or near such hedges or other fences, so that the sun and wind are excluded to the detriment of the highway, or if any obstruction is caused in any highway by any hedge, tree or bank, or by anything growing thereon, adjoining such highway, the highway authority may, with the previous consent of the owner and occupier concerned, cut, prune or pare the hedge, or prune or lop the trees, or remove the obstruction. This simplified procedure applies to all highways in the counties named, and not only to carriageways and cartways, but no provision is made for the recovery of expenses incurred by the highway authority. [525]

The foregoing statutory provisions are to some extent superseded by sect. 23 of the P.H.A., 1925 (*r*), which enables a local authority to take action where any tree, hedge or shrub overhangs any street or footpath so as to obstruct or interfere with the light from any public lamp, or to endanger or obstruct the passage of vehicles or foot passengers, or to obstruct the view of drivers of vehicles. In such case the local authority may serve (*s*) a notice on the owner of the trees, hedge or shrub, or on the occupier of the premises on which the tree, etc., is growing, requiring him to lop or cut the tree, etc., within fourteen days so as to prevent such obstruction or interference (*t*); and in default of compliance the local authority may themselves carry out the requirements of their notice, doing no unnecessary damage, and may recover the cost summarily as a civil debt from the owner or occupier upon whom the notice was served. A person aggrieved by any requirement of a notice may appeal to a petty sessional court within fourteen days after the service of the notice (*a*). Notice in writing of the appeal and of the grounds thereof must be given by the appellant to the clerk to the local authority; the court may make such order as they consider reasonable, and may award costs to be recovered as a civil debt; and no proceeding may be taken or work executed by the local authority until after the determination or abandonment of the appeal (P.H.A., 1925, sect. 8) (*b*). For the definition of "street," see P.H.A., 1875, sect. 4 (*c*). It seems that this term is used in sect. 23 of the P.H.A., 1925 (*d*), in its widest sense, and includes highways which are not "built-up." [526]

(*r*) 13 Halsbury's Statutes 1123. This section may be adopted by an urban authority (P.H.A., 1925, ss. 3, 5; 13 Halsbury's Statutes 1115, 1117); in a rural district the county council can exercise the powers of s. 23 without adoption (s. 23 (2)) in respect of county roads maintained by them, i.e. all roads in respect of which the county council is the highway authority by virtue of Part III. of the L.G.A., 1929; 10 Halsbury's Statutes 903.

(*s*) As to authentication and service of notices, see P.H.A., 1875, ss. 266, 267; 13 Halsbury's Statutes 735, saved for this purpose by Sched. III., Part I. (2) of P.H.A., 1886; 29 Halsbury's Statutes 546.

(*t*) Prevention of danger is not mentioned in that part of the section which authorises a notice, although endangering the passage of vehicles, etc., is one of the grounds for action; *semble*, in preparing a notice under s. 23, the wording of the section should be followed carefully.

(*a*) A notice of the right of appeal must be endorsed on any notice served by the local authority (P.H.A., 1925, s. 8 (4)); and see *Rayner v. Stepney Borough Council* (1911), 75 J. P. 468, where the corpn. was restrained from acting on a notice under the Housing, Town Planning, etc., Act, 1909, which omitted the statutory notification of the right of appeal.

(*b*) 13 Halsbury's Statutes 1117.

(*c*) *Ibid.*, 624.

(*d*) *Ibid.*, 1123.

The height of existing hedges and planting of new hedges can be controlled by the highway authority in order to prevent obstruction to view at bends or corners on highways repairable under s. 4 of the Roads Improvement Act, 1925 (e).

Sect. 46 of the Town and Country Planning Act, 1932 (f), provides for the insertion in a town-planning scheme of provisions for the preservation of single trees and groups of trees, and may specify areas of woodland as areas to be protected. An obligation may be imposed on the owner to replant woodlands (if felled) in accordance with the practice of good forestry, but with this exception, the scheme cannot impose any control over forestry operations. It is desirable that any town-planning scheme should be so drawn as to make it clear that there is no derogation from the powers of highway authorities under the statutes noted earlier in this title, and that there is no diminution of the rights or duties, at common law, of local authorities, owners or occupiers in relation to trees which are dangerous or constitute a nuisance. [527]

Dangerous and Fallen Trees.—In considering a claim for damages arising out of a dangerous or fallen tree it is necessary to consider (i.) in whom the ownership of the tree is vested, (ii.) whether there is evidence of negligence on the part of the defendant, and (iii.) in the case of a highway authority, the application of the doctrine of nonfeasance. At common law, the ownership of the tree accompanies the ownership of the soil, and as the presumption is that the ownership of the soil of a highway vests in the adjoining landowners, *prima facie* the ownership of trees growing naturally thereon vests in the same persons (g); this view would not apply, however, to trees planted by a highway or other authority under statutory powers, nor, it seems, is an adjoining landowner entitled to remove a tree planted on the highway by some person not clothed with statutory authority (h). The highway authority is, however, able to remove obstructive trees and hedges placed or growing on the highway subsequent to dedication without lawful authority (i). [528]

A person lawfully using a highway who suffers special damage from a dangerous or fallen tree, which amounts to a public nuisance, may maintain an action against the landowner or other person responsible for the nuisance (k). But the owner of the trees is not in the position of an insurer, and the principle in *Rylands v. Fletcher* (l) does not apply to growing trees, so that no action can be sustained for a private injury unless negligence (m) or nuisance (n) can be proved against the defendant (m). In the case of an action against a highway authority in respect of injury caused by a growing tree it would be necessary to

(e) 9 Halsbury's Statutes 221. See title ROAD MAKING AND IMPROVEMENT.

(f) 25 Halsbury's Statutes 470.

(g) See *Goodtitle d. Chester v. Alker and Elmes* (1757), 1 Burr. 133; 26 Digest 325, 586. Cf. *Curtis v. Kesteven County Council* (1890), 45 Ch. D. 504; 26 Digest 391 174.

(h) See J. P. Jo., Vol. XCII., at p. 214.

(i) *Turner v. Ringwood Highway Board* (1870), L. R. 9 Eq. 418; 26 Digest 315, 476; *Harris v. Northamptonshire County Council* (1897), 61 J. P. 599; 26 Digest, 449, 1656; *Stillwell v. New Windsor Corpn.*, [1932] 2 Ch. 155; Digest (Supp.).

(k) Cf. *Smith v. Giddy*, [1904] 2 K. B. 448; 2 Digest 65, 407; and observations of His Hon. Judge HOWLAND ROBERTS in *Thorne v. Roberts* (1923), 128 L. T. Jo. 155.

(l) (1868), L. R. 3 H. L. 330; 36 Digest 187, 311.

(m) *Noble v. Harrison*, [1926] 2 K. B. 332; 36 Digest 189, 316.

(n) *Wringe v. Cohen*, [1940] 1 K. B. 229, C. A.; Digest (Supp.).

go further and establish misfeasance (o), but if misfeasance can be proved in the case either of a growing tree or of a fallen tree, an action may lie (p). The planting of a dangerous type of tree (e.g. a yew tree) which projects over or grows upon the highway, and may be eaten by animals passing along the highway may also give ground for an action against the person, whether landowner or highway authority, responsible for planting the tree (q). [529]

A difficult question arises when a tree growing on privately-owned land adjoining the highway, falls so as to obstruct the highway. There does not appear to be any power vested in a highway authority to require the removal of a tree merely on the ground that it is in a dangerous condition and may fall upon the highway, though obviously the retention of such a tree, after being informed of its dangerous condition, might be evidence of negligence in an action against the landowner at the instance of a person injured in consequence of the fall of the tree; neither does the highway authority appear to possess any right of entering and removing the tree either at the expense of the landowner or at their own expense. If a tree falls and obstructs the highway, the only remedy open to the highway authority is to call upon the owner to remove the obstruction, and if he fails to do so, proceedings may be taken under sect. 72 of the Highway Act, 1835, for wilful obstruction of the highway. In practice, the matter is too urgent to permit of this procedure, and normally the highway staff remove the tree, obtaining such assistance as they can from the owner, either by a cash contribution towards the expense, or by enlisting his practical help in providing labour. When this course is not adopted, and the owner, after becoming aware of the obstruction fails to remove it, he may be liable in damages to any person injured by the obstruction (r); there must, however, be some substantial evidence of wilful obstruction, and of failure to remove the obstruction within a reasonable time after having the opportunity of doing so, and in *Hudson v. Bray* (s), it was held that sect. 72 of the Highway Act, 1835, does not impose any obligation upon an occupier of land from which a tree fell on to the highway, to light the obstruction, or to place a person on the highway to warn users of the highway. This decision may appear somewhat inconsistent with the decision in *Gully v. Smith* (r), but in the latter case the highway authority

(o) *Tregellas v. L.C.C.* (1897), 14 T. L. R. 55; 26 Digest 403, 1264.

(p) *Mackie v. Dumbartonshire County Council* (1927), 91 J. P. Jo. 634; Digest (Supp.). In this case an elm tree growing on land contiguous to, but not forming part of the highway, fell on a charabanc passing along the highway and injured a passenger. In a claim by an injured passenger it was pleaded that it was the duty of the highway authority to inspect the tree which was patently dangerous, and to take precautions for the safety of the users of the highway. It appeared that about one year before the accident, contractors on behalf of the highway authority had widened the road and in so doing had removed earth which supported the tree and had severed some of the roots. On appeal to the House of Lords from the First Division of the Court of Session in Scotland, it was held that the appellant's averments disclosed a relevant cause of action. It appears from the observations of Viscount Dunedin and of Viscount Sumner, that the crux of the matter was the execution of works which had the effect of rendering the tree unstable, and, it is submitted, this decision does not go so far as to render a highway authority liable to inspect trees and secure the safety of users of the highway, where the authority has not, by some alteration of, or work on, the highway, caused or aggravated the danger. In an English case on facts similar to those in *Mackie's Case*, consideration would have to be given to the effect of the Public Authorities Protection Act, 1893; 13 Halsbury's Statutes 455; and of the Limitation Act, 1939; 32 Halsbury's Statutes 223.

(q) *Crowhurst v. Amersham Burial Board* (1878), 4 Ex. D. 5; 2 Digest 65, 412.

(r) *Gully v. Smith* (1884), 12 Q. B. D. 121; 48 J. P. 309; 26 Digest 416, 1346.

(s) (1917), 81 J. P. 105; 26 Digest 416, 1349.

had clearly taken steps to require the defendant to remove the obstruction, and he had failed to do so, whereas in the case of *Hudson v. Bray*, the employees of the highway authority had commenced to remove the fallen tree, and the events giving rise to the claim seem to have occurred when the defendant was away fetching a lamp at the request of the road foreman, and apparently the servants of the highway authority had not taken any effective steps to warn road users. This case does not decide any question as to the liability of the highway authority in such circumstances, but it seems that if the highway authority commence to remove the obstruction and are negligent in so doing, an action would lie.

As to obstruction and damage by roots of trees, see *Butler v. Standard Telephones and Cables, Ltd. (t)*. [530]

London.—The position under the Highways Acts, Town Planning Acts, Roads Improvement Act, 1925, and the common law is the same in London as elsewhere. The P.H.As. do not apply to London on this subject (see title PLANTING OF TREES). The L.C.C. (General Powers) Act, 1904, sect. 49 (a), enables Metropolitan Borough Councils to plant and maintain in highways trees and guards for their protection; the power must not be exercised so as to hinder the reasonable use of the highway or so as to become a nuisance or injurious to adjacent owners or occupiers. Notice must be given to occupiers of the intended exercise of the power in relation to any highway, and if two-thirds in number or rateable value object, the powers may not be exercised. The L.C.C. (General Powers) Act, 1928, sect. 39 (b), empowers borough councils to require owners, etc., on 14 days' notice to lop trees and hedges or shrubs overhanging streets so as to obstruct the light of street lamps or the vehicular or foot traffic, or the view of drivers of vehicles. In default the borough council may lop and recover the cost from the defaulter. Persons aggrieved by any requirements of the borough council may appeal to a metropolitan police magistrate.

The Metropolitan Police Act, 1839, sect. 54 (10) (c), provides a penalty for damaging any tree or shrub in any public walk, park or garden. Among the matters on which the Port of London Authority may make bye-laws under sect. 279 of the Port of London (Consolidation) Act, 1920 (d), is the preventing of injury to shrubs, trees and woods on or near the Thames. Bye-laws may also be made by the L.C.C. under the L.C.C. (General Powers) Act, 1890, sect. 14, and Schedule B (e), for the protection of trees, etc., in parks, gardens and open spaces vested in or under the control of the Council. [531]

(t) [1940] 1 K. B. 399; Digest (Supp.).

(a) 11 Halsbury's Statutes 1260.

(b) *Ibid.*, 1414.

(c) 19 Halsbury's Statutes 119.

(d) 18 Halsbury's Statutes 681.

(e) 11 Halsbury's Statutes 1018, 1022.

TREES, PLANTING OF

See PLANTING OF TREES.

TRICYCLES

See BICYCLES.

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TRUNK ROADS

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See also titles :

HIGHWAY AUTHORITIES ;
 MINISTRY OF TRANSPORT ;
 REPAIR AND MAINTENANCE OF HIGH-
 WAYS ;
 RIBBON DEVELOPMENT RESTRICTION ;

ROADS OR STREETS ;
 ROADS CLASSIFICATION ;
 ROAD IMPROVEMENT ;
 ROAD TRAFFIC.

Introductory.—In 1936 Parliament at last recognised that the main traffic routes of the country are a matter of national importance. By the Trunk Roads Act, 1936 (*a*), a number of the principal main roads were transferred to the direct control of the Minister of Transport and as from April 1, 1937, he became the highway authority for these roads. This new type of road was called a trunk road and with a number of exceptions all the powers and functions of local authorities over these trunk roads were entirely superseded by the new powers of the Minister. However, by the Act the Minister has the power, which is usually exercised, to delegate the routine powers and duties of a highway authority over trunk roads to the local authority who would otherwise have been the highway authority. The whole expense of maintaining and improving these trunk roads is thrown on the road fund. [532]

Definition of Trunk Roads.—The principal main roads described in the First Schedule to the Trunk Roads Act, 1936 (*b*), became trunk roads on April 1, 1937. These roads are intended to constitute a “national system of routes for through traffic” (*c*). The Act contains no power to bring new main traffic routes into the scope of the Act, nor is there any power to exclude any of the routes set out in the schedule. However, there is power for the M. of T. by order to substitute as trunk roads, new roads or improvements to existing roads for existing roads or parts of roads, where the new roads or improvements were being constructed by local authorities at the commencement of the Act (*d*). Also the Minister can, if at any time he considers that a new road should be constructed or an improvement made to supersede any part of one of the specified trunk roads as a route for through traffic, make an order that the new road or improvement when completed, be a part

(*a*) 29 Halsbury's Statutes 183—218.

(*b*) *Ibid.*, 201.

(*c*) See Trunk Roads Act, 1936, preamble.

(*d*) For an exercise of this power, see the Trunk Roads Act, 1936 (substitution of new routes) Order, 1937 ; S.R. & O., 1937, No. 211.

of the trunk road in place of the part superseded (*e*). At least three months before making an order under this power the Minister must serve a notice of his intention on the county councils through whose areas the existing road and the new road runs. The county councils can object, and the Minister can, and if requested by a county council must, hold a public inquiry on the proposal. The new road becomes a part of the trunk road on the date mentioned in the order, and as from April 1, following the date when a notice is served by the Minister stating that the new road is ready for traffic, the part of the trunk road superseded by the new road ceases to be a trunk road and becomes an ordinary county road (*f*).

No road in the County of London or within a county borough can become a trunk road (*g*). [533]

Powers and Functions of the M. of T. and of Local Authorities over Trunk Roads.—When a road becomes a trunk road, subject to certain exceptions mentioned later, all powers and functions previously exercisable by highway authorities over county roads and county bridges including the functions of construction, maintenance, repair and improvement under any Act (including a private or local Act) can only be exercised by the M. of T. (*h*). Certain necessary modifications of enactments regarding the powers of the Minister over trunk roads, such as the Roads Improvement Act, 1925, sect. 5 (*i*), and sects. 47, 48, 54 and 56 of the Road Traffic Act, 1930 (*k*), are set out in the Second Schedule to the Trunk Roads Act, 1936 (*l*). [534]

The Third Schedule to the Act is in three parts and contains a list of enactments containing detailed powers which are transferred with substantial modifications to the Minister. The effect is to make the powers of the Minister over trunk roads larger and less restricted than the powers of local authorities over other roads.

The first part contains powers which can be exercised exclusively by the Minister and which the local authorities have no power to exercise at all over trunk roads. These are such powers as those conferred by sects. 18, 20 and 29 of the P.H.A. Amendment Act, 1907 (*m*), by sects. 25, 27 and 33 of the P.H.A., 1925 (*n*), and by sects. 46 and 53 of the Road Traffic Act, 1930 (*o*).

The powers set out in the second part are exercisable not only by the M. of T., but also by the local authorities, other than county councils, in any borough or urban district. These powers include the powers under the Towns Improvement Clauses Act, 1847 (*p*), and under sects. 22 and 23 of the P.H.A., 1925 (*q*). [535]

(*e*) Trunk Roads Act, 1936, s. 1 (3) ; 29 Halsbury's Statutes 186.

(*f*) Note the provisions mentioned on p. 236, for the property and liabilities attaching to the part of the road superseded to revert to the ordinary highway authority.

(*g*) Trunk Roads Act, 1936, s. 2 ; 29 Halsbury's Statutes 187.

(*h*) *Ibid.*, s. 3.

(*i*) This relates to the prescription of building lines, see 9 Halsbury's Statutes 223.

(*k*) 23 Halsbury's Statutes 649. See also title ROAD TRAFFIC.

(*l*) 29 Halsbury's Statutes 208.

(*m*) This relates to crossings over footways, excavations and deposits of building material in streets, see 13 Halsbury's Statutes 917, 918, 922.

(*n*) This relates to consents to overhead rails, pipes, wires, footbridges, etc., over streets and to the prescription of improvement lines, see 13 Halsbury's Statutes 1123, 1124, 1128.

(*o*) 23 Halsbury's Statutes 643, 648 ; see title ROAD TRAFFIC.

(*p*) 13 Halsbury's Statutes 552 (projections over streets).

(*q*) *Ibid.*, 1122, 1123 (water flowing on footpaths, refuse in streets and trees, hedges, etc., obstructing streets).

The powers set out in the third part are exercisable by the Minister and also by the local authorities (except those mentioned above), but only with the Minister's consent. Those powers are those conferred by sects. 39, 40, 42 and 43 of the P.H.A. Amendment Act, 1890 (*r*), and by sects. 13 and 14 of the P.H.A., 1925 (*s*). [536]

Under sect. 3 (4) of the Trunk Roads Act, 1936 (*t*), where under any Act a statutory undertaker who is authorised to execute works on or under any road, is required to give notice to a local authority or to obtain the approval or consent of a local authority or to carry out the work under the superintendence or to reinstate the road to the satisfaction of the local authority, in respect of trunk roads the M. of T. is substituted for the local authority and he is given power to act in the case of default by the undertaker. [537]

The powers of highway authorities under the Restriction of Ribbon Development Act, 1935 (*u*), are dealt with separately by detailed provisions (*a*). The powers conferred by sects. 1 and 2 of this Act are not exercisable by the Minister but are still exercisable over trunk roads by the county council or other local authority empowered by the Act. However, the local authority before giving any consent under these sections must consult the Minister, and he can require the consent to be withheld or made subject to conditions. Where compensation is claimed under the Restriction of Ribbon Development Act, 1935, in relation to a trunk road, the Minister must repay to the local authority the compensation paid by the authority, if the Minister made the local authority impose the restriction which gave rise to the claim for compensation. [538]

Delegation of Powers by the Minister to Local Authorities.—The Minister may by agreement with the council of a county or a borough or urban district delegate to it any of the powers of the Minister concerning the maintenance, repair and improvement of a trunk road within its district (*b*). Where there is a delegation the council acts as agent for the Minister and he can attach such conditions to the delegation as he thinks fit. The delegation must be subject to conditions that any works to be executed and any expenditure to be incurred shall be subject to the approval of the Minister, also that the council shall comply with any requirement or directions of the Minister as to the manner in which any works are to be carried out and the terms of any contracts to be entered into. It must also be a condition that any works shall be completed to the satisfaction of the Minister (*c*). If the Minister considers that a local authority to whom powers have been delegated are not keeping a trunk road in proper repair, the Minister can serve a notice requiring the local authority to do the repairs, and if this notice is not complied with the Minister may do anything that seems necessary to him to place the road in proper repair (*d*).

(*r*) 13 Halsbury's Statutes 840 (the erection of refuges, statues, trees, etc., on roads).

(*s*) *Ibid.*, 1119 (the provision of orderly bins, seats, etc., in streets).

(*t*) 29 Halsbury's Statutes 188.

(*u*) 28 Halsbury's Statutes 82.

(*a*) Trunk Roads Act, 1936, s. 4 and the Fourth Schedule; 29 Halsbury's Statutes 189, 214. The provisions of the schedule are important.

(*b*) *Ibid.*, s. 5; *ibid.*, 191.

(*c*) Compare similar provisions in ss. 35, 36 of the L.G.A., 1929; 10 Halsbury's Statutes 910.

(*d*) Trunk Roads Act, 1936, s. 5 (2); 29 Halsbury's Statutes 192.

The delegation can be determined by notice given either by the Minister or by the local authority. The notice must be served before October 1 in any year and will take effect on April 1 in the following year. [539]

Transfer of Property and Liabilities.—When a road becomes a trunk road, the road and any land or other property held by the highway authority for that road vest automatically in the Minister (*e*). This is subject to a number of exceptions and the provisions of the Act on this point are extremely involved and difficult to interpret. Similarly, liabilities (except loans and loan charges) incurred by the highway authority pass automatically to the Minister. Certain limited provisions for financial adjustments between the highway authority and the Minister are contained in the transitional provisions in the Fifth Schedule to the Act (*f*), but otherwise no payments have to be made on the transfer of property and liabilities. When a road ceases to be a trunk road the property and liabilities revert in the appropriate highway authority. [540]

Expenses.—All expenses incurred by the Minister with the approval of the Treasury in the maintenance, repair and improvement of trunk roads, including the construction of new roads to supersede existing trunk roads are to be defrayed out of the road fund (*g*). A county council may contribute towards the cost of the construction or improvement of a trunk road, and a borough or U.D.C. may also contribute if the construction or improvement of the road is in the nature of a town improvement (*h*). [541]

Miscellaneous.—The Minister is given full power to make various agreements with local authorities, and also to hold public inquiries (*i*). The former highway authorities must produce to the Minister on request all documents relating to their functions, property or liabilities over any road which becomes a trunk road. [542]

The Fifth Schedule to the Act contains transitional provisions such as that orders regulations and bye-laws made by the highway authorities over roads that become trunk roads remain effective until altered or revoked, but can be enforced only by the Minister, also that all agreements made by a local authority regarding a trunk road take effect as if the Minister had been a party to them instead of the local authority. [543]

The Act contains provisions for arbitration on any disputes that may arise on the exercise of the Minister's powers. [544]

(*e*) Trunk Roads Act, 1936, s. 7; 29 Halsbury's Statutes 194.

(*f*) 29 Halsbury's Statutes 216.

(*g*) Trunk Roads Act, 1936, s. 9; 29 Halsbury's Statutes 196.

(*h*) *Ibid.*, s. 6 (8); *ibid.*, 194.

(*i*) *Ibid.*, ss. 6, 10; *ibid.*, 193, 196.

TRUSTS, PAROCHIAL

See CHARITIES.

TUBERCULOSIS

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See also titles : CLINICS AND DISEASES ;
TUBERCULOSIS OFFICER ;
WELSH NATIONAL MEMORIAL.

Preliminary Remarks.—Tuberculosis is one of the most important causes of mortality. Apart from actual mortality it incapacitates a number of individuals for long periods at the most active time of life and is responsible for a great deal of crippling. It is a cause of poverty and unemployment, and is in turn predisposed to by these and other like forms of social distress. It is an infective disease, due to the invasion of the body by the *bacillus tuberculosis*, which is found in the droplet spray emitted from the respiratory passages of sufferers, in sputum, in dust, and commonly in raw milk. It is probable that few persons escape infection at some time or other, but the tuberculosis that this title has to deal with is that which is obvious on expert examination and to which the individual reacts with illness of varying degree. Tuberculosis is not an infectious disease in the ordinary sense. None the less infection from case to case is not uncommon, and an important work is that of examining "contacts." For these various reasons tuberculosis is singled out for special treatment. It is notifiable, and local authorities have important powers and duties in dealing with the disease.

The prevalence of the disease and the progress of the campaign against it in any area can be studied in the Annual Report of the M.O.H. and more particularly as regards statistics, in the returns made by the administrative tuberculosis officer to the M. of H. annually, as specified in Memo. 37/T (revised), issued by the M. of H. in 1930.

Tuberculosis from the point of view of the local authority is exhaustively treated in Report No. 64 on Tuberculosis by A. S. MacNalty, M. of H., 1932. [545]

Notification.—The notification of tuberculosis is the initial step by which the whole municipal and county organisation of preventive and therapeutic effort can be put into action. The Public Health (Tuber-

culosis) Regulations, 1930 (a), made by the Minister of Health, in exercise of his powers under the P.H.A., 1936, deal with tuberculosis that has been diagnosed in the living person from evidence other than that derived solely from tuberculin tests applied to that person. [546]

Every medical practitioner called in to visit any person and every school medical inspector inspecting children attending public elementary schools must, within forty-eight hours after first becoming aware that such person or one of such children is suffering from tuberculosis, make and sign a notification of the case (in the form set out in Schedule A or Schedule B, as the case may be, to the Public Health (Notification of Infectious Diseases) Regulations, 1918) (b), and must transmit the notification to the M.O.H. of the district within which the place of residence of the person is situate at the date of notification. In the case of an in-patient at an institution the "place of residence" is the usual place of residence. Notification is not required if the doctor concerned has reasonable grounds for believing that the case has in fact already been notified to the M.O.H. concerned (art. 5). [547]

The medical officer of a poor law institution or sanatorium must, as soon as practicable after the end of each week, make and sign a notification (in the Form I. set forth in the First Schedule to the Regulations) of all persons previously notified as suffering from tuberculosis and admitted during the week and transmit it to the M.O.H. of the district within which the places of residence of the persons notified are situate. This is to enable the M.O.H. concerned to arrange for the disinfection of the premises and for the after-care of the patients' dependants, so far as is necessary. He must also make and sign a notification (in the Form II. set forth in the First Schedule to the Regulations) of all persons notified as suffering from tuberculosis and discharged during the week, other than cases transferred to a poor law institution or a sanatorium, and transmit it to the M.O.H. of the district within which the places of destination of the persons notified are situate. This is to enable the M.O.H. concerned to secure a proper environment for the patient, to put him in touch with the tuberculosis officer and arrange otherwise for his after-care. When the places of residence, or the places of destination, as the case may be, of the persons to be notified are situate in more than one district a separate notification must be transmitted to the M.O.H. of each district. Notification is not required where the poor law institution or sanatorium is under the control of a county borough council, except in respect of a person whose place of residence or place of destination, as the case may be, is situate outside the county borough (art. 6). It is important to note that notification by the medical officer of a poor law institution or sanatorium on Form I. or II. in no way commits him to a diagnosis. He merely records an administrative event. [548]

The definitions of the words "sanatorium," "poor law institution," "hospital," "institution," and "medical officer," in the regulations should be carefully noted.

The obligation to notify does not apply to a medical practitioner acting in his capacity as :

- (a) medical officer of one of His Majesty's prisons or of a Borstal institution, a certified reformatory school, a certified industrial school, a state or certified inebriate reformatory, or a criminal lunatic asylum ;

- (b) medical examiner of candidates for some office or appointment ;
- (c) medical examiner on behalf of an insurance company of a person proposing to insure his life at the risk of that company ;
- (d) medical examiner of the passengers and crew of an emigrant ship ; or
- (e) examining surgeon under the Factories Act, 1937.

There are certain exceptions also as regards patients who are inmates of buildings, ships, vessels, boats, tents, vans, sheds or similar structures belonging to the Crown (art. 13 (2)). [549]

A notification must be enclosed in a sealed envelope or folded and sealed in such a manner that during its transmission its contents cannot be observed. It must be addressed to the M.O.H., and transmitted to him personally, or delivered at his office or residence, or sent by pre-paid letter post addressed to him at his office or residence. [550]

The Notification Register.—The M.O.H. must cause to be entered in a register kept by him for the purpose all the particulars contained in every notification received by him and relating to a person whose place of residence or place of destination is within his district. He must also enter in the register particulars of any person previously notified who removes into his district and of whose removal he is informed by another M.O.H., and also particulars of any person who normally resided in the district and whose death from tuberculosis has come to his knowledge, but who has not been notified to him. He must from time to time, but not less frequently than once in every quarter, revise the register by removing from it (i.) the entries therein relating to notifications which have been withdrawn by or with the consent of the notifying medical practitioner on the ground that the original notification was incorrectly made ; (ii.) the entries relating to persons who are certified by the medical practitioner in attendance to have recovered ; and (iii.) the entries relating to persons who to his knowledge have died, have ceased to reside permanently in the district or who, after adequate search, cannot be found resident in the district. [551]

The notification register must be kept in the custody of the M.O.H. and may not be open to inspection by any person other than a person specially authorised by resolution of the local authority, the county M.O.H., the local tuberculosis officer, the local school medical inspector, or an officer of any Government department authorised in that respect by that department. Tuberculosis being a chronic disease, the register should not be merely a record of the fact of notification. If properly kept it is a record of the persons in the district actually suffering from the disease and has a statistical and administrative value. It should be kept on a card or loose leaf system. In order to assist in the proper revision of the register the regulations define the expression "recovery from tuberculosis." This is deemed to be a fact when symptoms, signs or other evidence of existing tuberculosis have been absent for a period of five years in the case of a person who has suffered from pulmonary tuberculosis, or for a period of three years in the case of a person who has suffered from non-pulmonary tuberculosis. [552]

Powers and Duties of the Local Authority in Connection with Notification.—As soon as practicable after the end of the quarter during which a notification is duly transmitted, the local authority of the district within which the place of residence or place of destination of the person notified is situate must pay the appropriate fee to the notifying practitioner, who is not required to submit any account. The fee covers

all his expenses. Fees are only payable to practitioners acting in certain capacities. For notification under art. 5 a private practitioner receives half a crown; the medical officer of a hospital or a poor law institution, or a district medical officer receives one shilling. For notification under art. 6 the medical officer of a poor law institution receives one shilling for the first name on a list and threepence for each additional name. [553]

For the purposes of the regulations the local authority may, on the advice of their M.O.H., supply all such medical or other assistance, and all such facilities and articles as may reasonably be required for the detection of tuberculosis, for preventing the spread of infection; and for removing conditions favourable to infection; and for that purpose they may appoint such officers, do such acts, and make such arrangements as may be necessary. These powers do not authorise them to take any action at any institution other than one belonging to them. Under these powers the local authority commonly provide the services of tuberculosis visitors, arrange for the bacteriological examination of sputum for the purpose of diagnosis, and furnish patients with paper handkerchiefs or pocket sputum flasks. They may loan a bedstead and bedding in order that a patient may be able to sleep alone, or a shelter to be erected for the purposes of a sleeping place in a garden. They also disinfect bedding, clothing and the dwelling room where necessary. These powers are concurrent in some respects with those exercised by the county authority under the treatment scheme and it is necessary that there should be a clear understanding between the two authorities as to their respective spheres. In circular 1107 of July 16, 1930, the M. of H. emphasises the functions of the local authority in taking any necessary action arising out of notification or otherwise. The local authority is further authorised by the regulations, acting on the advice of their M.O.H., to provide and publish or distribute suitable summaries of information and instruction respecting tuberculosis, and the precautions to be taken against the spread of infection from that disease. [554]

Special Duties of the M.O.H. in Connection with Notification.—The M.O.H. on receiving a notification erroneously addressed to him must forthwith transmit it to the proper quarter. He must at the same time inform the medical practitioner that he has done so and give him the name and address of the M.O.H. to whom he has sent the notification (art. 10 (1)). Every notification and every document relating to a notified person must be regarded by the M.O.H. and by every person who has access thereto, as confidential (art. 10 (4)). It may be inferred, none the less, from the terms of art. 5 of the Public Health (Prevention of Tuberculosis) Regulations, 1925 (c), that the M.O.H. may report in writing to the local authority concerning a person residing in the district who is suffering from tuberculosis of the respiratory tract and is in an infectious state, and is engaged in employment or occupation in connection with a dairy which involves the milking of cows, the treatment of milk or the handling of vessels used for containing milk. [555]

The M.O.H. must, on becoming aware that a person who has been resident in his district and who is suffering from tuberculosis, has permanently changed his place of residence into some other district, forthwith notify the M.O.H. concerned, as regards the transfer and as

regards all relevant particulars in the notification register (art. 10 (6)). He must also, as soon as practicable after the end of each week, send to the county M.O.H. a statement of every notification received during the week, with full particulars (art. 10 (7)). He must also, as soon as practicable after the end of each quarter, furnish the county M.O.H. with a statement, compiled from the notification register, showing: (a) the number of cases of tuberculosis on the register at the commencement of the quarter; (b) the number of cases notified to him under the regulations for the first time during the quarter; (c) the number of cases removed from the register in a preceding quarter under paragraph (e) of this article which have been restored to the register during the quarter (giving the name and address of each such case and the reason for the restoration); (d) the number of cases added to the register during the quarter which have been brought to his notice otherwise than by notification under these regulations; (e) the number of cases removed from the register during the quarter (giving the name and address of each such case, and the reason for such removal); and (f) the number of cases remaining on the register at the end of the quarter. Separate figures must be given in each case for males and females, and for pulmonary and non-pulmonary cases (art. 10 (8)).

The information so furnished to the county M.O.H. enables him to envisage the state of the tuberculosis problem in every part of his area, and to study the statistics of its prevalence, according to the types of the disease and according to its sex and age distribution. He is then better able to advise the county authority as to the county scheme of treatment. [556]

The local authority must defray the expenses incurred by the M.O.H. in keeping the notification register, making the regular returns and dealing with the forms of notification (art. 10 (9)). [557]

Upon receiving a notification, the M.O.H. must make such inquiries and take such steps as are necessary or desirable for investigating the source of infection, for preventing the spread of infection, and for removing conditions favourable to infection (art. 11 (1)). The M.O.H. may not take any steps as above mentioned at an institution, other than one belonging to the local authority, except with the consent of the managers of the institution (art. 11 (1)). It is permissible and usual for these steps to be taken by a woman visitor. Such a visitor may conveniently be a tuberculosis visitor on the staff of the county tuberculosis dispensary, but the regulations clearly indicate that she must, at least nominally, act under the instructions of the M.O.H. and must be formally appointed an officer of the local authority for this purpose. Careful records are kept concerning each patient and if he removes elsewhere they follow him to the appropriate authority, their confidential character being strictly observed at all times.

The duties assigned to the M.O.H. by the Sanitary Officers (Outside London) Regulations, 1935 (*d*), are deemed to extend to and to include all action taken by a M.O.H. under the Regulations (art. 11 (2)). [558]

Other Matters Arising out of Notification.—The regulations have no effect in authorising or requiring the M.O.H. or the local authority, or any other person or authority, directly or indirectly, to put in force with respect to a notified person any enactment which renders the person, or anyone in charge of the person, or any other person, liable to a penalty, or subjects the person to any restriction, prohibition or dis-

ability affecting himself, or his employment, occupation or means of livelihood, on the ground of his suffering from tuberculosis (art. 14). For instance, any discretionary action under the Public Health (Prevention of Tuberculosis) Regulations, 1925 (*e*), by any person or authority, is not affected by the regulations.

The regulations have no effect in derogation of any power conferred, or of any duty or obligation imposed, with respect to tuberculosis by a local Act, and the regulations do not apply to a district in which any such local Act is in force, except so far as they impose duties and obligations or confer powers which are not imposed or conferred by the local Act and which are not inconsistent with any duties, obligations or powers which are imposed or conferred by the local Act. In any such district the regulations are deemed to be modified accordingly (art. 15). [559]

Powers and Duties of the Local Authority.—It is the duty of a county authority to make adequate arrangements for the treatment of persons in their area, who are suffering from tuberculosis, at or in dispensaries, sanatoria and other institutions approved by the M. of H., who may approve an institution for such time, and subject to such conditions as he thinks fit, and withdraw any such approval (*f*). [560]

A county authority or a local authority may also make such arrangements as they think desirable for the treatment of tuberculosis (*g*). [561]

The Minister may (*h*), by order, constitute an advisory committee for the purpose of assisting county authorities in making arrangements for the treatment of persons suffering from tuberculosis who are masters, seamen or apprentices in or to the sea service or the sea-fishing service. Such an order may provide for the advisory committee including representatives: (a) of any county authority within whose area a substantial number of persons who are masters, seamen or apprentices in or to the sea service or sea-fishing service are resident; (b) of the governing body of the Seamen's Special Fund for which provision is made, by sect. 138 of the National Health Insurance Act, 1936 (*i*), so long as that body contribute out of their funds towards the expenses of the committee; and (c) if the said governing body cease at any time so to contribute, of societies approved under the National Health Insurance Act, 1936, more than three-fourths of whose members are persons who are such masters, seamen or apprentices as aforesaid, and may contain such incidental, consequential and supplemental provisions as appear to the Minister to be necessary or appropriate for giving full effect to the order, which may be varied or revoked at any time by another order so made. [562]

In circular 1072 of February 12, 1930, the Minister of Health states that he is advised that it is necessary for his approval to be obtained to any proposed modification of an approved scheme of institutional treatment which would result in smaller provision being made for treatment, but he indicates his general sanction of any extension of a scheme which an authority may think desirable, so long as the extension provides for treatment being given at institutions approved by him. As regards

(*e*) S.R. & O., 1925, No. 757.

(*f*) P.H.A., 1936, s. 171; 29 Halsbury's Statutes 443.

(*g*) *Ibid.*, s. 173; *ibid.*, 444.

(*h*) *Ibid.*, s. 175; *ibid.*, 445.

(*i*) 29 Halsbury's Statutes 1064.

the formal approval of institutions belonging to county authorities or joint committees of such authorities the Minister requires only the following conditions to be observed : (1) that the institution and the records kept thereat are open to inspection at any time by any officer of the Ministry ; (2) that such records are kept and such returns are made in connection with the institution as the Minister may from time to time require ; and, in the case of an institution in which children are treated, the following further condition ; (3) that if the Board of Education make any requirements in regard to educational arrangements for the children, those requirements will be satisfactorily met.

It is not necessary for the Minister's approval to be obtained to proposed extensions of these institutions unless the cost is to be defrayed by means of a loan. [563]

Sects. 321 to 325 of the P.H.A., 1936, which deal with the procedure after default by a county or local authority in discharging their functions in relation to tuberculosis may also be consulted in this connection. [564]

Local authorities have concurrent powers to provide for the treatment of tuberculosis in hospitals, clinics, etc., by virtue of sect. 181 of the P.H.A., 1936, and the Poor Law Act, 1930 (j). See titles CLINICS, HOSPITALS, POOR LAW INSTITUTIONS.

It is not the general practice to recover costs for the treatment of tuberculosis where effected under sect. 171 of the P.H.A., 1936.

For the treatment of tuberculosis in Wales, see title WELSH NATIONAL MEMORIAL. [565]

The Tuberculosis Scheme.—A complete scheme for the treatment of tuberculosis includes the following (k) :

(a) Staff.

- (1) The county M.O.H. or county borough M.O.H. as administrative tuberculosis officer.
- (2) The tuberculosis officer (see title TUBERCULOSIS OFFICER).
- (3) The medical superintendent and medical staff of the special institutions.
- (4) The health-visiting and nursing staff.

(b) The tuberculosis dispensary.

(c) Institutions for the treatment of tuberculosis :

I. Institutions for the treatment of pulmonary tuberculosis.

- (i.) The sanatorium.
- (ii.) The hospital. When practicable (i.) and (ii.) should be included in—
- (iii.) The combined institution for treatment, occupational therapy and employment.
- (iv.) The home for advanced cases.

II. Institutions for the treatment of tuberculosis in children.
Children's sanatoria.

III. Institutions for Special Forms of Tuberculosis :

- (i.) Institutions for the treatment of surgical tuberculosis (in connection preferably with a comprehensive ortho-pædic scheme).
- (ii.) Hospitals undertaking the treatment of other special forms of tuberculosis (lupus, genito-urinary, etc.).

(j) 12 Halsbury's Statutes 968.

(k) See A. S. MacNalty, Report on Tuberculosis, M. of H., 1932.

- IV. Arrangements with general hospitals or special clinics for differential diagnosis and for the treatment of complications.
- V. Institutions and Arrangements for Training and After-care.
 - (i.) Technical Training Sanatoria for adolescents.
 - (ii.) Industrial centres—residential and non-residential.
 - (iii.) The Village Settlement.
 - (iv.) After-care. [566]

A few headings may be selected for special discussion.

The Tuberculosis Dispensary.—It is usual to set out six functions of a tuberculosis dispensary :

- (i.) Receiving house and centre for diagnosis.
- (ii.) Clearing house and centre for observation.
- (iii.) Centre for curative treatment.
- (iv.) Centre for examination of contacts.
- (v.) Centre for after-care.
- (vi.) Information bureau and educational centre.

The dispensary is the centre and pivot of the tuberculosis scheme. It is an organisation, not merely a building for an isolated form of treatment, and it embraces every general measure of preventive medicine as well as all specific measures for combating tuberculosis. It should include a pathological laboratory and should be in close touch with an X-ray department, facilities for dental treatment, and consulting experts for deciding difficult problems of diagnosis. One tuberculosis dispensary is usually required for every 150,000 to 200,000 population in an urban area.

The M. of H. (1) consider that it is desirable that the dispensary should be utilised mainly for its proper function of a consultation centre and clearing house. All definitely diagnosed cases of tuberculosis should be referred to their own medical attendant for domiciliary treatment, except (a) those who require immediate treatment in residential institutions; (b) those who require some special form of treatment which can be given most conveniently and efficiently at the dispensary; and (c) those non-insured persons who cannot afford to, or for some other sufficient reason will not, go to a private medical practitioner. [567]

Residential Treatment.—The *sanatorium* is suitable for the more or less prolonged treatment of early cases of pulmonary tuberculosis or of those in which owing to relatively high resisting power there is a prospect of arrest of the disease. The *hospital* is suitable for (a) the observation of doubtful cases for the purpose of diagnosis, or for determination as to their suitability for sanatorium treatment; (b) the treatment of acutely ill patients, with transference to a sanatorium if they respond to treatment; (c) short period treatment and education in hygiene of chronic cases; (d) isolation of dangerously infective and advanced cases. The M. of H. encourages the provision of the combined sanatorium-hospital. The *home for advanced cases* may be an adapted dwelling-house. The *village settlement* seeks to prolong the life of the arrested case by providing industrial work under sheltered conditions and in a rural environment. It is known also as the *industrial colony*. The residential institution for the treatment of

surgical tuberculosis may be solely for that purpose, or may be an orthopaedic hospital for the treatment of all kinds of crippling diseases.

The Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (*m*), made by the M. of H. in pursuance of his powers under sect. 180 of the P.H.A., 1936 (*n*), require that a person appointed by a county authority or a joint committee to be a medical superintendent, that is, a medical officer in clinical charge of a residential institution for the treatment of patients suffering from tuberculosis in the early or curative stages of the disease and which contains not less than seventy-five beds, must have certain qualifications. He must be a registered medical practitioner who prior to April 1, 1930, has held the appointment of medical superintendent with the approval of the Minister, or who, subsequent to qualification, (1) has had at least three years' experience in the practice of his profession, (2) has spent in general clinical work a period of not less than eighteen months of which not less than six months have been spent in a hospital as resident officer in charge of beds occupied by general, medical or surgical cases, and (3) has received special training, for a period of not less than six months, in the diagnosis and treatment of tuberculosis. [568]

The Minister may dispense with any of these requirements in any case in which it appears to him desirable to do so, on such terms and conditions as he thinks fit, and such dispensation may be given at any time provided that the Minister is satisfied that the interests of any person will not be prejudiced thereby. Otherwise a person may not be appointed as a medical superintendent unless his qualifications are in accordance with the regulations.

In Circular 1072 of February 12, 1930, the M. of H. indicates that his department is prepared at any time to advise on the planning, equipment or staffing of sanatoria, or in regard to any proposed extensions, considerable experience having been accumulated in these matters. [569]

After-care.—In addition to the powers which the local authority have under the Public Health (Tuberculosis) Regulations, 1930 (*o*), sect. 173 (2) of the P.H.A., 1936 (*p*), provides that a county authority may make such arrangements as they may think desirable for the after-care of persons who have suffered from tuberculosis. A tuberculosis care committee may be a committee of the authority but an alternative, which has the general approval of the M. of H., is to utilise a voluntary care committee, which acts in an advisory capacity and does not spend money. Such a voluntary committee may include members of the authority, officers concerned with tuberculosis work, representatives of the school medical service, public assistance and war pensions work, almoners from local hospitals and other social workers. The committee devotes its attention to the sociological problems arising from the occurrence of tuberculosis in a household, which may be as important in their way to the interests of the patient and the family as the medical treatment of the individual sufferer. The wide representation of interests on the committee may enable a great deal to be done without the disbursement of money by putting the patient and his family in touch with the various official and charitable channels of assistance. [570]

(*m*) S.R. & O., 1930, No. 69.
(*o*) S.R. & O., 1930, No. 572.

(*n*) 29 Halsbury's Statutes 447.
(*p*) 29 Halsbury's Statutes 445.

The Tuberculosis Visitor.—A tuberculosis visitor is a woman appointed by the county authority as a whole-time officer whose duties include the visiting of the homes of persons suffering from tuberculosis for the purpose of giving advice as to the care and hygiene of such persons and as to the measures necessary to prevent the spread of infection. The Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (*q*), made by the M. of H. in pursuance of his powers under sect. 180 of the P.H.A., 1936 (*r*), require that a person appointed to be a tuberculosis visitor must be a woman who, prior to April 1, 1930, has held the appointment of tuberculosis visitor with the approval of the Minister, or who has obtained the health visitors' certificate issued by the Royal Sanitary Institute under conditions approved by the Minister, or the diploma issued under the Board of Education (Health Visitors' Training) Regulations, 1919 (*s*), or who is a fully-trained nurse and has had at least three months' special experience at a sanatorium or hospital for the treatment of tuberculosis, or at a tuberculosis dispensary. The Minister may dispense with any of these requirements in any case in which it appears to him desirable to do so, on such terms and conditions as he thinks fit, and such dispensation may be given at any time provided that the Minister is satisfied that the interests of any person will not be prejudiced thereby. Otherwise a person may not be appointed as a tuberculosis visitor unless her qualifications are in accordance with the regulations.

The tuberculosis visitor may be engaged for part of her time in other duties in connection with the school medical service or maternity and child welfare. Her special duties include: (a) visiting the homes of tuberculous patients after notification; (b) obtaining information as to the environmental conditions at the home of the patient, and as to contacts; (c) following up "defaulting" patients and after-care work; (d) assisting the tuberculosis officer at dispensary sessions; (e) nursing patients in their homes. (This is best done by special district nurses.) She should work under the direct control of the tuberculosis officer. [571]

Measures of Compulsion in Tuberculosis.—Sect. 172 of the P.H.A., 1936 (*t*), provides that a court of summary jurisdiction may, upon the application of the county council or the local authority and with the consent of the superintending body of a hospital or institution, make an order for the removal of a tuberculous person to such hospital or institution, and for his detention and maintenance therein for such period not exceeding three months as the court may think fit. It must be proved to the satisfaction of the court that the person (a) is suffering from tuberculosis of the respiratory tract and is in an infectious state; (b) that his circumstances are such that proper precautions to prevent the spread of infection cannot be taken, or that such precautions are not being taken; (c) that serious risk of infection is thereby caused to other persons; and (d) that accommodation is available for him in a suitable hospital or institution. (Sub-sect. (1).)

Before making application for such an order the authority must give the person concerned, or some person having the care of him, not less than three clear days' notice of the time and place at which the application will be made. (Sub-sect. (3).) [572]

(*q*) S.R. & O., 1930, No. 69.
(*s*) S.R. & O., 1919, No. 1293.

(*r*) 29 Halsbury's Statutes 447.
(*t*) 29 Halsbury's Statutes 443.

The court may also, on the hearing of the application and if it is thought necessary, require the person to be examined by such duly qualified medical practitioner as the court may direct. (Sub-sect. (4).)

The order may be directed to such officer of the authority as the court may think expedient, and that officer or any officer of the hospital or institution may do all acts necessary for giving effect to the order. (Sub-sect. (7).) [573]

The authority on whose application an order has been made must, if so directed by the court : (i.) pay the whole, or such part as the court may direct, of the cost of the patient's removal to and maintenance in the hospital or institution ; (ii.) make towards the maintenance of any of his dependants such contribution as the court may direct ; and, in the absence of any direction by the court, may pay the whole or such part, if any, as they think fit of the said cost and make such contribution, if any, as they think fit. The cost of removal of the person, and of his detention and maintenance must be borne by the authority, and during the period of detention the authority may, and if so required by the court must, make towards the maintenance of any dependants of the person such contributions as the authority may think fit, or as may be directed by the court, as the case may be. (Sub-sect. (5).)

Upon not less than three clear days' notice being given to the clerk of the authority, application for the rescission of the order may be made by or on behalf of the person at any time after the expiration of six weeks from the date of the order, and upon the hearing of such application the court may rescind the order. (Sub-sect. (6).) [574]

Where, before the expiration of any period for which the person has been ordered to be detained, the court is satisfied upon the application of the authority that the conditions which led the court to order his detention will again exist if he is not detained for a further period, the court may, subject to the like consent, order the detention of the person for a further period, not exceeding three months. (Sub-sect. (2).)

The Public Health (Prevention of Tuberculosis) Regulations, 1925 (*u*), prohibit any person who is aware that he is suffering from tuberculosis of the respiratory tract from entering upon any employment or occupation in connection with a dairy which involves the milking of cows, the treatment of milk or the handling of vessels used for containing milk. (Art. 4.) [575]

Notwithstanding anything in the Public Health (Tuberculosis) Regulations, 1930 (*a*), the local authority, on the report in writing of their M.O.H., and being satisfied that a person residing in their district, who is engaged in any employment or occupation of the kind referred to above, is suffering from tuberculosis of the respiratory tract and is in an infectious state, may by notice in writing signed by their clerk or M.O.H. require the person to discontinue his employment or occupation on or before a date specified in the notice, such date being not less than seven days after the service of the notice. The person must thereupon comply with the notice. (Art. 5.)

If anyone deems himself aggrieved by a requirement of an authority under the regulations, he may, within fourteen days after service of notice of the requirement, appeal to a court of summary jurisdiction, and he must in that event give written notice to the clerk to the authority of his intention to appeal and of the ground thereof. The court may

(*u*) S.R. & O., 1925, No. 757.

(*a*) S.R. & O., 1930, No. 572.

thereupon make such order in the matter as may seem equitable to them, and may award costs, which are recoverable summarily as a civil debt, and the order so made is binding and conclusive. Upon the hearing of the appeal the court has the power with the consent of the appellant to direct that he be examined by a registered medical practitioner nominated by the court. (Art. 6.) [576]

The provisions of sect. 278 of the P.H.A., 1936 (b) (which relates to compensation to individuals for damage resulting by reason of the exercise of the powers under the Act), apply to any person who sustains any damage by reason of the exercise of any of the powers of the regulations in relation to any matter as to which he is not himself in default. (Art. 7.) Information to this effect must be appended to the notice.

The expression "milk" in the regulations means milk (including cream, skimmed milk and separated milk), intended for sale for human consumption. The expression "dairy" includes any farm, cow-shed, milk store, milk shop or other place from which milk is supplied on, or for, sale, but does not include a shop or other place in which milk is sold for consumption on the premises only. (Art. 2.)

The authority must enforce and execute the regulations and for this purpose must make such inquiries and take such other steps as may seem to them to be necessary for securing the due observance of them in their district. (Art. 3.)

In circular 615 of August 7, 1925, the M. of H. discusses the regulations and stresses the importance of the evidence to be furnished as to the medical condition of the person who is to be dealt with. In their opinion it is desirable, where practicable, for a report to be obtained from a pathologist as to the presence of tubercle bacilli in the person's sputum and for an examination of the person to be made by the tuberculosis officer. [577]

The notice issued by the authority must be in the following form (art. 5 and Schedule):

The Public Health (Prevention of Tuberculosis) Regulations, 1925.

To.....

of.....

The , being satisfied on the report of their Medical Officer of Health that you are engaged in an employment or occupation involving the milking of cows, the treatment of milk, or the handling of vessels used for containing milk in connection with a dairy, and that you are suffering from tuberculosis of the respiratory tract and are in an infectious state, hereby give you notice that you are required on or before the day of , 19 , to discontinue such employment or occupation.

Dated this day of , 19 .

Signature of Clerk or

Medical Officer of Health.....

Note: Any person sustaining damage by reason of the exercise by a local authority of any of the powers of these regulations, and not being himself in default, is entitled under sect. 278 of the P.H.A., 1936, as applied by these regulations, to receive full compensation from the local authority. Any claim which you desire to make should be addressed in writing to the clerk to the council.

You are entitled, within fourteen days after the service of this notice, to appeal to a court of summary jurisdiction against the local authority's decision requiring you to discontinue your employment.

If you intend to appeal you must give notice in writing to the clerk to the council of your intention and of the ground of the appeal. [578]

Tuberculosis in Schools.—Pulmonary tuberculosis in a recognisable form is seldom a large factor in school life. Children known to be suffering from this disease are, on the advice of the school medical officer, excluded from school. Certain cases of non-pulmonary tuberculosis may require to be excluded if infection is likely to be transmitted. The Board of Education advise (c) that a teacher found to be suffering from pulmonary tuberculosis shall not be regarded as a suitable member of the staff of a public elementary school, or of a secondary, technical or other school, and if he is recognised by the board under the code his continued recognition is conditional on his abstaining from teaching until he can submit two consecutive medical certificates, viz. one stating that the disease is quiescent, and the other, six months later, stating that the improvement in his general and local physical condition has been maintained. If these are satisfactory he is then regarded as fit to resume the duties of a teacher, but his continued recognition is subject to reconsideration in the light of subsequent medical certificates, which are required (a) six months after the last report, and then (b) after a period of one year, (c) after a period of another year.

The board, however, do not object to the employment in a certified open-air school or a sanatorium for tuberculous children of a teacher suffering from pulmonary tuberculosis provided either that a medical report has been submitted to the board stating that the disease has become quiescent, or that the medical superintendent of the institution can certify that the employment is not likely to prove injurious to the teacher or to the children in his charge.

The board further advise that local education authorities should take steps to ensure that the general conditions outlined above shall govern the employment of teachers, caretakers or other members of the staff of schools in their areas. [579]

Human Tuberculosis or Bovine origin.—The bovine type of tuberculosis is distinct from the human type, but it has been clearly demonstrated that man can be infected with the bovine, as well as with the human, type of the tubercle bacillus, and that many fatal cases of tuberculosis in man are due to bovine infection. It is children particularly who suffer from such infection, which is mainly conveyed to them in milk coming from tuberculous cows, and it is estimated that more than 1,000 children under fifteen years of age die annually in England and Wales from infection of this origin. The methods adopted to bring about the reduction of tuberculosis in cattle and to ensure the supply of milk which is free from infection are fully described under the titles DISEASES OF ANIMALS and MILK AND DAIRIES, to which reference should be made.

For an authoritative discussion of bovine tuberculosis in relation to man reference may be made to M. of H. Report No. 63, 1931 (Memorandum on Bovine Tuberculosis in Man). [580]

(c) Memo. on Closure of and Exclusion from School, issued jointly by the M. of H. and the Board of Education, 1927.

London.—Sects. 219 to 224, sect. 308 and the Seventh Schedule of the P.H. (London) Act, 1936 (*d*), repeal and incorporate the relevant provisions of the P.H. (Tuberculosis) Act, 1921, and other enactments. See titles HOSPITAL SERVICES (LONDON), PUBLIC HEALTH AND HOUSING COMMITTEE and MILK AND DAIRIES. The scheme made by the L.C.C. on May 12, 1936, provides, *inter alia*, for free treatment for all tubercular patients. [581]

Concluding Remarks.—County and local authorities have power under sect. 179 of the P.H.A., 1936 (*e*), to arrange for publication within their areas of information on questions relating to tuberculosis, and for the delivery of lectures and the display of pictures or cinematograph films in which the subject is dealt with. For this purpose the assistance of such bodies as the Central Council for Health Education, Hope House, Wood Street, S.W.1, or the National Association for the Prevention of Tuberculosis, Tavistock House North, Tavistock Square, London, W.C.1, may be sought. The latter body is a voluntary association which is concerned with all questions relating to the prevention of tuberculosis. [582]

(*d*) 30 Halsbury's Statutes 565—566, 608, 623.

(*e*) 29 Halsbury's Statutes 446.

TUBERCULOSIS OFFICER

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See also titles : CLINICS AND DISEASES;
MEDICAL OFFICER OF HEALTH;
TUBERCULOSIS.

Preliminary Remarks.—This title deals with the officer who is responsible for the clinical control of tuberculosis by the local authority in the dispensary area. The county M.O.H. is usually the *administrative tuberculosis officer* for the county area and has administrative control over the tuberculosis officer, subject to the directions of the authority. Through the agency of the administrative tuberculosis officer, the general methods of prevention, the other health services, *e.g.* maternity and child welfare, municipal and county hospitals, and the school medical service, are correlated with particular measures for combating tuberculosis. In a county area, the county medical officer is, or should be, in close touch with the medical officers of health of the constituent county districts, so that he may co-ordinate their local preventive work, for which they are responsible in regard to every notified case of tuberculosis, with the county scheme. His knowledge

of and harmonious relations with the medical practitioners of the county area further facilitate anti-tuberculosis work. [583]

Status and Qualifications.—The tuberculosis officer is usually appointed by the county council and holds his appointment subject to such conditions as are expressed or implied at the time of his appointment. In some cases where a tuberculosis dispensary is provided at a hospital or other voluntary institution, the tuberculosis officer is appointed by, and is the servant of, the governing body. In such cases he is none the less under the administrative control of the M.O.H. to the extent necessary for the proper working of the county scheme.

The Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (a), made by the M. of H., in pursuance of his powers under sect. 180 of the P.H.A., 1936 (b), define a tuberculosis officer as a medical officer in clinical charge of a tuberculosis dispensary provided by a local authority under their arrangements for the treatment of tuberculosis. Such an officer must be a registered medical practitioner and, if he has not held the appointment of tuberculosis officer prior to April 1, 1930, with the Minister's approval, he must have had at least three years' experience in the practice of his profession. He must also have spent in general clinical work a period of not less than eighteen months, of which not less than six months shall have been spent in a hospital as resident officer in charge of beds occupied by general medical or surgical cases. He must also have received special training, for a period of not less than six months, in the diagnosis and treatment of tuberculosis. The Minister, however, may dispense with any of these requirements in any case in which it appears to him desirable to do so, on such terms and conditions as he thinks fit, and such dispensation may be given at any time provided that the Minister is satisfied that the interests of any persons will not be prejudiced thereby. Otherwise a person may not be appointed as a tuberculosis officer unless his qualifications are in accordance with the regulations.

A tuberculosis officer usually devotes the whole of his time to the duties of his office. He may be a part-time officer or his duties may be combined with those of a M.O.H. of a district or an assistant school medical officer. Such combined appointments will, no doubt, be rarely made in the future, in view of the highly specialised nature of the work and the exacting nature of the qualifications referred to above. In large areas there may be a chief clinical tuberculosis officer who is in charge of the various methods of treatment of tuberculosis throughout the area. Where the tuberculosis officer is directly responsible to the county M.O.H. it is essential that he should be quite independent in all matters where clinical knowledge and judgment are concerned and he should conduct his own correspondence on these matters. [584]

High qualifications and special experience in general medicine, as well as in tuberculosis, are necessary qualifications in a tuberculosis officer, and for the best results he must also have the quality of judicious sympathy and the gift of impressing upon his patients the importance of the rules of treatment laid down. His expert knowledge of tuberculosis should be such as will command the confidence of the local profession (c).

(a) S.R. & O., 1930, No. 69.

(b) 29 Halsbury's Statutes 447.

(c) See, further, A. S. MacNalty, Report on Tuberculosis, 1932 (M. of H. Report, No. 64).

As regards the number of tuberculosis officers to be appointed to any area the normal basis of staffing should provide for one tuberculosis officer for each 160 deaths a year from tuberculosis in that area (*d*). [585]

General Duties.—The tuberculosis officer is the officer immediately responsible for the dispensary service in his area and matters ancillary to it. In whatever way the patient is brought to his notice it is for him to exercise his special skill in making or withholding the diagnosis of tuberculosis. For this purpose he may utilise bacteriological or radiological aids. The diagnosis being established it is for him to advise as to the proper treatment, at a sanatorium, hospital, at home, etc. If the patient is treated at home, the tuberculosis officer may supervise the course of treatment by the patient's doctor. The tuberculosis officer does no domiciliary treatment. It is no part of his duty to treat patients at the dispensary unless they require some special or expert kind of treatment, but actually he treats all kinds of patients, using discretion in this matter. He should keep in touch with the home environment of the patient through the reports of the tuberculosis visitors and should visit at least once the home of every patient, unless he considers that in the interests of the patient a visit would be undesirable. Tuberculosis being communicable he should endeavour to examine the home contacts of all newly notified cases. Owing to the insidious nature of the disease the closest observation is often necessary and often for a long period, before the possibility of the disease can be excluded. Supervision is also necessary for a long period after the disease has been arrested.

The tuberculosis officer is the head of the dispensary, regarded as an information bureau and educational centre. He should keep his knowledge up to date and be acquainted with all modern advances in the diagnosis and treatment of tuberculosis, by attendance at post-graduate courses and professional congresses. For this purpose the local authority should allow the tuberculosis officer a period of study-leave every two years or so. The tuberculosis officer should be relieved of all unnecessary clerical work so that his time may be spent in the more medical duties. [586]

In many areas the tuberculosis officer is appointed as honorary consultant to the local poor law or municipal hospital. Such an arrangement is not only helpful to the resident medical staff but it serves to bring the tuberculosis officer into contact with a variety of cases and so adds to the interest of his work. He can also watch the progress of patients he has recommended for admission.

He should be in close touch with the after-care of patients and should therefore attend the meetings of the tuberculosis care committee. He is thus able to advise on the medical needs of individual cases and to inform himself of the measures taken by the committee in the economic interests of the patient.

The tuberculosis officer may be called upon to furnish reports and certificates in connection with ex-service men suffering from tuberculosis, or to attend a Ministry of Pensions medical board in a consultative capacity (*e*). [587]

(*d*) M. of H. Circular 149, December 8, 1920.

(*e*) See, further, M. of H. Memo. 146/T., January, 1930.

In Circular 466 of December 21, 1923, and the accompanying Memo. 286, the M. of H. deals fully with the relations between the tuberculosis officer and the insurance medical practitioner when the patient is an insured person. The practitioner is bound by the terms of his service to confer with the tuberculosis officer and to prepare and send to him reports on certain occasions. The tuberculosis officer should in certain cases offer to meet the practitioner in consultation or send him the appropriate form of report on any patient who is under domiciliary treatment (Form G.P. 36), to be filled in and returned by the practitioner to the tuberculosis officer. In those cases in which the tuberculosis officer affords systematic treatment at the dispensary to an insured person, he should be prepared to furnish the patient, if the latter is incapable of work, with certificates, at reasonable intervals, to enable him to obtain sickness benefit, etc., under the National Health Insurance Acts, 1936 and 1937. [588]

The tuberculosis officer, being an officer of the county council, is not required in that capacity to take any action pursuant to Articles 11 and 12 of the Public Health (Tuberculosis) Regulations, 1930 (*f*), and arising out of the notification of a person to the M.O.H. of the local authority under those regulations. None the less it is usually found convenient that he and the tuberculosis visitors attached to the dispensary should do so. This is effected by arrangement between the two authorities, and in some cases the tuberculosis officer is formally appointed assistant M.O.H. to the local authority, without salary, for the purpose of action under the regulations. The tuberculosis officer must notify persons under the regulations just as any medical practitioner, but he receives no fees for such notifications. He is entitled to inspect the register of notifications for a district which his dispensary serves, but must regard information obtained in this way as confidential (*g*). [589]

A number of authorities have made arrangements with the H.O. for their tuberculosis officers to carry out the initial examination of certain workers in the refractories, sandstone, pottery and asbestos industries. These examinations are made under the Silicosis and Asbestosis (Medical Arrangements) Scheme, 1931 (*h*), as amended in 1934 (*i*). The Home Secretary pays a fee of six shillings to the local authority, in respect of each examination made by a tuberculosis officer, out of the Silicosis and Asbestosis Medical Expenses Fund (*k*).

In the industries mentioned above it is regarded as important that workmen should not be unsuitable for the work on the ground of deficient chest development or the presence of tuberculosis disease, and tuberculosis officers are amongst those who may be specially appointed by the Home Secretary to make initial examinations under the scheme referred to above. [590]

In Memo. 37/T (Revised) the M. of H. requires the tuberculosis officer to keep such records, including registers, as may be necessary to enable the county M.O.H. to prepare the annual return set out in the memo. [591]

(*f*) S.R. & O., 1930, No. 572; see title TUBERCULOSIS.

(*g*) *Ibid.*, art. 10.

(*h*) S.R. & O., 1931, No. 341.

(*i*) S.R. & O., 1934, No. 889.

(*k*) See letters to local authorities from the Home Secretary of August 10, 1931, October 14, 1931, and November 21, 1934, and the Silicosis and Asbestosis (Medical Fees) Regulations, 1931; S.R. & O., 1931, No. 412.

London.—Tuberculosis officers are appointed by Metropolitan Borough Councils and the City Corporation as sanitary authorities under the P.H. (London) Act, 1936 (1), at tuberculosis dispensaries provided by these authorities. The tuberculosis service in each borough is under the administrative supervision of the M.O.H. To bridge the gap between dispensary and residential treatment the L.C.C. as authority for residential treatment enables tuberculosis officers to have access to patients in institutions. Provision has been made by the L.C.C. for appointing tuberculosis officers as honorary consultants on the staff of L.C.C. hospitals which treat tuberculosis and for giving each officer access to tubercular patients in the L.C.C. general hospitals for the purpose of seeing patients known to him whether he is attached to the hospital as a consultant or not. The L.C.C. also places at the disposal of tuberculosis officers facilities at general hospitals for X-ray diagnosis. [592]

Concluding Remarks.—The professional societies to which tuberculosis officers belong comprise the Tuberculosis Association, Manson House, 26 Portland Place, W.1, and the Tuberculosis Section of the Society of Medical Officers of Health, Tavistock House South, Tavistock Square, W.C.1. [593]

(1) See s. 225 ; 30 Halsbury's Statutes 567.

TUBERCULOUS COWS

See MILK AND DAIRIES.

TUBERCULOUS MILK

See MILK AND DAIRIES.

TUNNELS

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See also titles : LONDON ROADS AND TRAFFIC ;
MAINTENANCE AND REPAIR OF STREETS.

Classification of Tunnels.—The various kinds of tunnels which are met with may, for the purposes of this title, be divided into two classes :

(a) Tunnels with which local authorities as such are not immediately concerned, such as tunnels to carry railways or roads under rivers or through hills, or to carry railways or tramways underground in urban areas or to carry canals or aqueducts under roads or railways. These are generally authorised by special Acts and are built and controlled as provided therein.

(b) Tunnels which local authorities may provide or control by virtue of existing legislation, in their capacity of road or drainage authorities, such as underground passages to facilitate street crossing by pedestrians, short tunnels to carry roads through obstructing embankments, pipe tunnels to carry ducts for public utility services (these only when the local authority has obtained statutory powers *ad hoc*), and drainage tunnels for roads or to divert or carry canals or watercourses which would otherwise interfere with roads or sewers. [594]

Acts of Parliament.—Apart from local Acts which may provide for special powers, the general powers of local authorities in respect of tunnels are to be found in the Highway, Road, and Road Traffic Acts, the Tramways Acts, the P.H.As., the L.G.As., the Land Drainage Acts, and the Abandonment of Railways Act. [595]

Effect of Ownership of Subsoil.—The power of local authorities to construct tunnels is limited by the fact that, in highways and streets, ownership of the soil is limited to " so much of the actual soil of the street as might be necessary for the purpose of preserving and maintaining, and using it as a street " (a). But as regards street or road subways, the Development and Road Improvement Funds Act, 1909, s. 8 (b), had already included these in the definition of roads and the Road Traffic Act, 1930, s. 55 (c), gave urban district councils and highway authorities

(a) *Per* Lord HALSBURY, L.C., in *Tunbridge Wells Corp'n. v. Baird*, [1896] A. C. 434 ; 26 Digest 330, 618.

(b) 9 Halsbury's Statutes 212.

(c) 23 Halsbury's Statutes 652.

power to "construct, maintain, temporarily close and remove subways under the road for the use of foot passengers." [596]

As regards the construction of underground conveniences, the subsoil of any street so far as required for the purpose was, as regards London, vested in the highway authority by the P.H. (London) Act, 1936, s. 113 (d). As regards districts outside the London area, the local authority is empowered to construct underground conveniences by s. 87 of the P.H.A., 1936 (e), subject to consent of the county council, where the latter is the highway authority in respect of a highway under which the convenience is to be constructed. [597]

So far as other kinds of tunnels may require to be constructed under streets or highways, the local authority has to come to terms with the owners of the subsoil. [598]

Tunnelling under Highways by Owner of Subsoil.—Generally, the owner of land on both sides of a highway has the right to make a tunnel through his soil under the road, provided he does not interfere with the road above or any subsisting rights therein (f).

But in an *urban* district, it is an offence under the P.H.A., 1875, s. 26 (g)—which has remained unaffected in this respect by the P.H.A., 1936—to build any "vault, arch or cellar" under the carriageway without the consent of the urban authority; and it has been held that this expression includes a tunnel and that the local authority are entitled to alter, pull down or otherwise deal with a tunnel built without their consent under a street vested in them (h).

On the other hand, where land was vested in a company for the purposes of its undertaking, and a road running through that land was transferred to and vested in the local authority by a private Act, on the local authority objecting to the company constructing a tunnel under the road, it was held that the road was vested in the local authority for the purposes of a road only, that they had no right to the subsoil other than as local authority, and that they were not entitled to restrain the company from making the tunnel (i). [599]

Powers of Railway Companies.—The Railways Clauses Consolidation Act, 1845, sect. 15 (k), provides that railway companies may construct tunnels under highways; but when a company has obtained statutory powers embodying the Act, it cannot enter into the subsoil until it has paid compensation to the owner of the subsoil (l).

In connection with the development of underground railway systems in urban areas, it has been considered necessary to alter this condition. An instance is found in the London Passenger Transport Act, 1934, sect. 55 (3) (m), which provides that "the Board may enter upon, use and appropriate the subsoil and under-surface of any common or commonable lands, public street, road, footway or place (shown on

(d) 30 Halsbury's Statutes 550.

(e) 29 Halsbury's Statutes 390.

(f) *Cattle v. Stockton Waterworks Co.* (1875), L. R. 10 Q. B. 453; 43 Digest 1096, 267.

(g) 13 Halsbury's Statutes 637.

(h) *Walker U.D.C. v. Wigham, Richardson & Co.* (1901), 66 J. P. 152; 26 Digest 566, 2598. *Seem*, however, that a hole drilled beneath the street would not fall within this power: see *per* FARWELL, J., in the notes to this case, *Lumley's Public Health* (11th ed.), p. 79, note (d).

(i) *Poplar Corp'n. v. Millwall Dock Co.* (1904), 68 J. P. 339; 26 Digest 330, 621.

(k) 14 Halsbury's Statutes 37.

(l) *Ramsden v. Manchester, etc., Rail. Co.* (1848), 1 Ex. 723; 26 Digest 326, 596.

(m) 27 Halsbury's Statutes 603.

the deposited plans) or as much thereof as shall be necessary for the purposes of the works without being required to purchase the same or any easement therein or thereunder or to make any payment therefor." As regards the subsoil of private properties, the Board is authorised by sect. 58 (n) "to purchase and take an easement or right of using the subsoil and under-surface" without being required to purchase the surface or any buildings thereon. [600]

Roads in Tunnels under Railways.—When a public highway passes through a tunnel under a railway, the tunnel must be constructed so as to give the width of roadway required by the Highway Act, 1835 (o), as the width applies to the highway as a whole and not merely to any particular part; and where the roadway through the tunnel is narrower than the required width, the justices may refuse to certify (p) that the highway is made in conformity with that Act, although the highway authority has decided that the narrowness of the tunnel does not interfere with the utility of the road (q).

Road tunnels which have to be constructed for railway purposes are generally, in whole or in part, maintained at the expense of the railway company. When the company are authorised to abandon any railway or part of a railway under which a roadway is carried in a tunnel maintainable by them, then, unless the tunnel is authorised to be removed and the road restored to the like or an equally convenient and good state as it was in before it was interfered with by the makers of the railway, the company must pay to the road authority a sum of money to be determined by arbitration in discharge of their liability in respect of such tunnel and roadway (r). [601]

Liability of County Council and Urban Authority regarding Road Tunnels.—When an urban authority has claimed to retain the power of maintaining a county road under the L.G.A., 1888, sect. 11 (2), now replaced by L.G.A., 1929, sect. 32 (s), and the road runs through a tunnel, the cost of maintenance of the tunnel may have to be shared by both authorities. The Reigate corporation had retained by virtue of sect. 11 (2) of the Act of 1888 a main road within their area known as the "Tunnel Road," the county council remaining liable to make an annual payment to the corporation towards maintenance, repair and improvement of the road. The road ran for some fifty-six yards through a brick tunnel over which was a footpath which was an ancient highway, the land on which it rested being the property of the corporation. Repairs having become necessary to the brickwork of the tunnel, a question arose as to the liability of the county council to contribute. It was held on the authority of *R. v. Lordsmere (Inhabitants)* (t), that the walls and roof of the tunnel, which were built at the same time and were necessary to keep the road open, were part of the road, or that even if they were not, their repair and maintenance were a necessary part of that of the road; that the costs fell within sect. 11 (2) of the Act of 1888, in accordance with the decision in *Sandgate U.D.C. v. Kent County*

(n) 27 Halsbury's Statutes 604.

(o) 9 Halsbury's Statutes 50.

(p) See s. 23; 9 Halsbury's Statutes 59.

(q) *R. v. Surrey JJ.* (1861), 3 L. T. 808; 26 Digest 362, 372.

(r) Abandonment of Railways Act, 1850, s. 22; 14 Halsbury's Statutes 102.

(s) 10 Halsbury's Statutes 906.

(t) (1886), 54 L. T. 766; 26 Digest 364, 392.

Council (u), and that the county council were liable to make an annual payment to the corporation in respect of those costs (a). [602]

Tramways.—Where any tramway or work connected therewith is likely to interfere with or in any way to affect a tunnel or subway under the road, fourteen days' notice in writing must be given by the tramway authority to the highway authority or to the proper authority concerned and the work must be carried out to the satisfaction of such authority, who shall be indemnified against all expenses (b). [603]

Acquisition by Prescription.—Ownership of a tunnel under a highway may be obtained by prescription, as in *Bevan v. London Portland Cement Co. (c)*, the case of a tunnel under a highway which was successfully claimed against the adjoining owner by reason of adverse possession for twelve years. [604]

Tunnels for Pipes and Ducts of Statutory Undertakers.—The nuisance caused in urban areas by the exercise of the power given to statutory undertakers to break up streets for the purpose of installing, diverting or repairing their mains, although minimised as regards London by the application of sect. 4 of the London Traffic Act, 1924 (d), has induced some urban authorities to obtain powers to construct tunnels under streets for the purpose of housing such mains, in imitation of the practice obtaining in many foreign cities. The powers and liabilities of the local authority in respect of such tunnels depend entirely upon the local Acts authorising them. [605]

Tunnels for Highway Drainage.—By virtue of sect. 67 of the Highway Act, 1835 (e), a highway authority is empowered to make tunnels for drainage of the highway "in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damage which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein directed to be settled and paid."

The highway authority is entitled to exercise its discretion as to the location or direction of any tunnel which may be made under this section in lands adjoining the highway and so long as there is no misconduct or negligence on its part, it is not liable to have its discretion overruled (f). [606]

London.—See title LONDON ROADS AND TRAFFIC.

(u) (1898), 79 L. T. 425; 26 Digest 265, 65.

(a) *Reigate Corpn. v. Surrey County Council*, [1928] Ch. 359; Digest Supp.

(b) Tramways Act, 1870, s. 31; 20 Halsbury's Statutes 18.

(c) (1892), 67 L. T. 615; 19 Digest 16, 46.

(d) 19 Halsbury's Statutes 175. See title LONDON ROADS AND TRAFFIC.

(e) 9 Halsbury's Statutes 83.

(f) *Derby, Earl of v. Bury Improvement Commissioners* (1869), L. R. 4 Ex. 222.

TURNPIKE ROADS

See ROADS CLASSIFICATION.

TYPHOID

See INFECTIOUS DISEASES.

TYPHUS FEVER

See INFECTIOUS DISEASES.

ULTRA VIRES

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See also titles passim.

Meaning, Extent and General Application of the Doctrine.—The doctrine of *ultra vires* affects the operations of all types of corporate bodies ; some have incorrectly applied it also to the acts of unincorporated associations and trade unions and even to the acts of individuals.

Many definitions of the term have been attempted, both in and out of court, but the best is that given in Halsbury (a) :

“ The term *ultra vires* in its proper sense denotes some act or transaction on the part of a corporation which, although not unlawful or contrary to public policy if done by an individual, is yet beyond the

legitimate powers of the corporation as defined by the statute under which it is formed, or the statutes which are applicable to it, or by its charter or memorandum of association."

This definition is inadequate in that it does not clearly define the relationship of the doctrine to torts committed by or on behalf of a local authority; it is incorrect in that an act prohibited or not authorised by the charter creating a corporation is not *ultra vires* the corporation (*aa*). Otherwise the definition is unassailable. [607]

The doctrine became recognised in the law books about the time of the Industrial Revolution, largely in connection with the need for speedy transport from one part of the country to another caused by the rapid growth of industry. To further the many canal and railway construction schemes towards the end of the first half of the last century, numerous *ad hoc* corporations were created by special Act of Parliament and it was not long before some of these corporations began to enlarge the scope of their functions beyond those which Parliament had intended to give to them. Many law suits followed, and out of these the doctrine became firmly established. This long series of cases is admirably analysed in the leading case of *Ashbury Rail. Carriage and Iron Co. v. Riche* (*b*), in which the doctrine is fully expounded and explained. [608]

To understand the method of its application to local authorities, it is necessary to make a short reference to their nature and to the ways in which they may be created.

Corporations may be either corporations sole or corporations aggregate, and are of many types. Local authorities are normally corporations aggregate, but it is possible for them not to be corporations at all, in which case the doctrine, strictly speaking, cannot apply to them. Different Acts have contained different definitions (*c*); *e.g.* "any person or body of persons who receive and expend any local rate, but does not include overseers of the poor" (*d*).

Local authorities may be the creation of statute (such as county and urban and rural district councils), or they may exist by virtue of royal charter (as municipal corporations). Occasionally, in the absence of any known charter of incorporation, a municipal corporation is said to exist by virtue of prescription (*e.g.* Manchester Corporation); in such cases a lost charter or grant from the Crown is presumed. [609]

Broadly speaking, at common law a corporation created by charter may do anything that an ordinary individual may do (*e*). There is nothing in the common law which prohibits a chartered corporation from doing an act, even if the charter actually prohibits it; the sanction here is that the corporation runs the risk of having its charter withdrawn by an action on a *scire facias* (*f*). On the other hand, a corporation created by statute may only do what is authorised by the

(*aa*) See notes (*e*) and (*f*), *post*.

(*b*) (1875), L. R. 7 H. L. 653; 13 Digest 354, 922.

(*c*) In the L.G.A., 1933, for example, the term is, by s. 305; 26 Halsbury's Statutes 466, defined as "the council of a county, county borough, county district or rural parish."

(*d*) District Auditors Act, 1879, s. 8; 10 Halsbury's Statutes 571. For a still wider definition, see the Local Loans Act, 1875, s. 34; 12 Halsbury's Statutes 253. This includes various unincorporated bodies.

(*e*) Blackstone, Book I., Chap. XVIII., ii.; *Sutton's Hospital Case* (1612), 10 Co. Rep. 23a; 18 Digest 270, 3.

(*f*) *R. v. London Corp.* (1691), 1 Show. 274; *sub nom. Smith's Case*, 4 Mod. Rep. 52; 13 Digest 359, 945.

statute creating it or by any other statute applying to it (g), but this rule is to be applied reasonably, and whatever may fairly be regarded as incidental to the things authorised by the legislature ought not, in the absence of express prohibition, to be held *ultra vires* (h). This principle here laid down constitutes the doctrine of *ultra vires* (i). [610]

Local authorities other than municipal corporations are the creation of statute and their powers are entirely determined by statute. Though at common law there is no such restriction upon the powers of municipal corporations, they too are restricted, first by the L.G.A., 1933, which prevents the application of the general rate fund to purposes not authorised by that Act (k), and secondly (at least by implication) by every statute which grants powers to or imposes duties upon them. In practice, therefore, the difference between municipal corporations and statutory local authorities is nowadays, so far as the doctrine of *ultra vires* is concerned, largely academic. [611]

It is unfortunate that the term has so often been wrongly used and that it has been confused with such terms as "illegal" and "breach of trust." The distinction between "*ultra vires*" and "illegal" is clear from Halsbury's definition; the difference between an *ultra vires* act and a breach of trust is more subtle. The distinction is that the doctrine of *ultra vires* looks to the power and not to the duty so that, while *ultra vires* acts are often breaches of trust (e.g. since 1882 (l) municipal corporations have held their property subject to a trust) the converse is not necessarily true, for a trustee may have sufficient power to do an act but may use that power wrongly.

Even in connection with local authorities the term has been misused, for reference is often made to an act as being *ultra vires* a borough council. Now a borough council (other than a metropolitan borough council), unlike a county, urban or R.D.C., is not incorporated. The corporation is the mayor, aldermen and burgesses, and not the council, and though the corporation always acts through the council, the deeds—or misdeeds—are those of the corporation. It is unfortunate that this misconception has been perpetuated by very many Acts of Parliament, and powers are now regularly given to the borough council itself (m).

(g) *Ashbury Rail. Carriage and Iron Co. v. Riche* (1875), L. R. 7 H. L. 653; 13 Digest 354, 922; per Lord CAIRNS, at p. 670:

"If that is the purpose for which the corporation is established, it is a mode of incorporation which contains in it both that which is affirmative and that which is negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation, and it states, if it is necessary so to state, negatively that nothing shall be done beyond that ambit, and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified."

See also *Wenlock (Baroness) v. River Dee Co.* (1885), 10 App. Cas. 354; 13 Digest 360, 955, which made clear the fact that the doctrine applies to all corporations whose powers are limited by statute.

(h) *A.-G. v. Great Eastern Rail. Co.* (1879), 11 Ch. D. 449; 13 Digest 416, 1365; (1880), 5 App. Cas. 473; 13 Digest 356, 932; *Peel v. London & North Western Rail. Co.*, [1907] 1 Ch. 5, C. A.; 9 Digest 576, 3831; 10 Digest 1155, 8181; *A.-G. v. Smethwick Corpn.*, [1932] 1 Ch. 562; Digest (Supp.); and *Armour and Others v. Liverpool Corpn.* (1939), 160 L. T. 203; Digest (Supp.).

(i) *L.C.C. v. A.-G.*, [1902] A. C. 165; 13 Digest 366, 994, per Lord HALSBURY.

(k) Part VIII.; 26 Halsbury's Statutes 404. And see *A.-G. v. Manchester Corpn.*, [1906] 1 Ch. 643; 13 Digest 362, 972.

(l) Municipal Corporations Act, 1882; 10 Halsbury's Statutes 576.

(m) E.g. the L.G.A., 1933; 26 Halsbury's Statutes 295. It may be that Government draftsmen prefer the measure of uniformity attained by the adoption of this course, and that they rely upon the Interpretation Act, 1889, s. 15 (1); 18 Halsbury's Statutes 998.

Logically, one might suggest that in exercising such powers the council has no right to make use of the common seal, or to contract except under the individual seals of each and every member. [612]

On occasion the acts of committees have been referred to as being *ultra vires*, and since corporations often delegate powers to committees it is correct to say that an act of such a committee, if beyond the powers of the delegating body, is *ultra vires* the corporation, for a corporation can only delegate to a committee power to do acts which the corporation itself can do.

The general principle of the doctrine of *ultra vires* and its relation to local authorities having been explained, it remains to consider its application in more detail to the various functions of those authorities. It is neither practicable nor desirable to consider each of the normal services of a local authority separately, and the following sections relate, therefore, to the general powers of a local authority, no matter with what particular service or function they may be connected. [613]

Application to the Expenditure and Borrowing of Money.—Expenditure or borrowing of money is, in one way or another, involved in the exercise of the great majority of the functions of a local authority.

Restrictions upon expenditure, as upon the exercise of all corporate powers, arise from the general principle already stated that a statutory corporation can only do such acts as are expressly or impliedly authorised by statute (*n*), and that a municipal corporation is subject to the limitations imposed by statutes such as the L.G.A., 1933, and will be restrained from applying its funds to purposes not authorised by that or any other Act. In regard to local authorities other than municipal corporations, the principle is simple; but the position of municipal corporations is somewhat complicated by the L.G.A., 1933, and as yet the courts have not been called upon for an explanation.

From 1835 (*o*), until the various funds of a local authority were unified as a result of the Rating and Valuation Act, 1925 (*p*), the position was that the rents and profits of corporate property, and all moneys belonging to municipal corporations, had to be carried to a fund known as the borough fund, out of which the expenses of the corporation were to be paid. If a surplus remained this could be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough (*q*). Power was given to raise money by means of a rate in the event of a deficit but a surplus could not be artificially created by over-estimating the rate requirement.

The functions of local authorities, and municipal corporations in particular, soon began to multiply, and it was not long before a surplus from rents and profits was unknown; the levying of rates was as regular, if not as great, a burden as it is to-day. The need to consider the extent of the power to expend money "for the public benefit of the inhabitants," therefore, never arose. The L.G.A., 1933 (*r*), still provides that all receipts, including rents and profits, are to be carried to the same fund (now called the general rate fund) and all liabilities

(*n*) *Wenlock (Baroness) v. River Dee Co.* (1885), 10 App. Cas. 354; 13 Digest 360, 955.

(*o*) Municipal Corporations Act, 1835, s. 92; 10 Halsbury's Statutes 601.

(*p*) See s. 10; 14 Halsbury's Statutes 631.

(*q*) *Newcastle-upon-Tyne Corpn. v. A.-G.*, *A.-G. v. Newcastle-upon-Tyne Corpn. and North Eastern Rail. Co.*, [1892] A. C. 568; *affg.* S. C. *sub nom.* *A.-G. v. Newcastle-upon-Tyne Corpn. and North Eastern Rail. Co.* (1899), 23 Q. B. D. 492, C. A.; 33 Digest 85, 550.

(*r*) S. 185; 26 Halsbury's Statutes 407.

discharged thereout, and any surplus of the fund can be applied as before. This time, however, no distinction is made between surpluses arising from rents and profits and from rates, and it may be, therefore, that by over-estimating the rate requirements in one year, and thus creating an artificial surplus, all the restrictions imposed on expenditure by hundreds of statutes may be avoided, leaving a discretion unfettered except by the need to apply the money for the public benefit and the improvement of the borough. Sect. 186 of the 1933 Act (*s*), which gives express power only to levy rates to meet liabilities, does not appear to prevent the adoption of this course; for sect. 185 (3) (*t*) contemplates the possibility of a surplus, and who is to prevent a council—acting, shall we say, with prudence—from under-estimating the produce of a 1*d.* rate? The position can hardly have been intended by Parliament and the contention should be disproved as soon as possible by the extension of *A.-G. v. Newcastle-upon-Tyne Corpn. and North-Eastern Rail. Co. (u)*. [614]

Expenditure is often involved in many matters relating to property, contract and tort, but the application of the doctrine to these matters is separately discussed, and it is not proposed to duplicate such references. Several miscellaneous matters involving expenditure of money are, however, worthy of mention.

For instance, expenditure upon corporate advertising is closely restricted by the Health Resorts and Watering Places Act, 1921 (*v*), and the Local Authorities (Publicity) Act, 1931 (*x*), the first giving power to spend in any one year up to the produce of a penny rate (increased, by sect. 75 of the L.G.A., 1929 (*a*), by 33½ per cent.), and the latter, though only in advertising outside the British Isles, up to the produce of a halfpenny rate. Many authorities have overcome the limited powers given by these Acts by permitting private firms to produce, for free distribution by the council, handbooks advertising the advantages and amenities of the district concerned, the expense of production being defrayed from advertisement revenue. Since no expenditure is involved, it is considered that advertisement by this method cannot be attacked as being *ultra vires*. [615]

The promotion of and opposition to parliamentary bills so far as concerns local authorities to which the L.G.A., 1933, applies, is dealt with in Part XIII. of that Act (*b*), which replaces the previous powers contained in the Borough Funds Acts, 1872 and 1903, the L.G.As., 1888 and 1929, and the County Councils (Bills in Parliament) Act, 1903. The earliest Act was passed in consequence of the decision in *R. v. Sheffield Corpn. (c)* to the effect that the expenses of opposing regulations of and a bill in Parliament promoted by a waterworks company were not incurred for the benefit of the inhabitants and were therefore to be disallowed. Until 1934, the powers of local authorities were still limited in various directions, but any county, borough or urban or R.D.C. may now (*d*) promote a bill or oppose any local or personal bill, if satisfied of the expediency of such a course, except that a bill may not be promoted to establish a gas or water works to compete with an existing gas or water company established under Act of Parliament. Before the L.G.A., 1933,

(*s*) 26 Halsbury's Statutes 407.

(*u*) See note (*q*), *ante*, p. 262.

(*x*) 24 Halsbury's Statutes 369.

(*b*) 26 Halsbury's Statutes 443.

(*c*) (1871), L. R. 6 Q. B. 652; 33 Digest 86, 554.

(*d*) L.G.A., 1933, s. 253; 26 Halsbury's Statutes 443.

(*t*) S. 185; *ibid.*

(*v*) 13 Halsbury's Statutes 976.

(*a*) 10 Halsbury's Statutes 932.

was passed it was held that strict compliance with the provisions of the Borough Funds Acts was necessary, *e.g.* money could not be spent in opposition to a bill not affecting the existing property of a local authority, though prejudicing individual inhabitants (*f*). There was an exception to this rule, in that even without express powers a bill materially affecting the existence or powers of a local authority might be opposed (*g*).

An express power to promote a bill negatives the existence of any implied power, whether for the purposes referred to in the express power or any other (*h*), but in the absence of statutory power and of express or implied prohibition there is an incidental power to promote a bill for the extension or modification of the authority's existing powers (*i*). [616]

The case of *Re Sunderland Corpn.* (*k*) decided that expenditure upon the entertainment of distinguished persons was *ultra vires*; but this difficulty can often be overcome by the payment of a salary to the mayor, though no condition can be attached to the use which the mayor may make of it. It has been decided that it is permissible to increase the salary of the mayor if the council *bona fide* considers that, owing to some important event, he will have to incur unusual expenses in the way of entertainments (*l*), though a similar decision in the case of a payment ostensibly to the mayor, but actually carried to a separate account and expended by a special committee, is less understandable (*m*). Incidentally, though it has been the general practice when presenting to a distinguished person the honorary freedom of the borough to charge the cost of a "casket" to the general rate fund, nowhere does there appear to be power to do so. Similarly, there is no power to spend money on the provision of a gold chain for the mayor (*n*). [617]

The power to pay salaries to corporate officials must be exercised reasonably (*o*), and this leads to the important principle that expenditure upon a lawful object may become *ultra vires* if it is excessive. Furthermore, if a payment which could have been made in a legal form is actually made unlawfully that fact is sufficient ground for the grant of an application to quash an order for the payment (*p*), though the costs of the application may have to be paid by the persons making it (*q*). On the other hand, an official may receive payment for extra services rendered (*r*), though not retrospectively (*rr*), and expenditure may even be lawfully incurred though the necessity for it arises through negligence on the part of the local authority (*s*). [618]

(*f*) *A.-G. v. Rickmansworth U.D.C.* (1902), 66 J. P. 410; 33 Digest 41, 222.

(*g*) *A.-G. v. Brecon Corpn.* (1878), 10 Ch. D. 204; 43 J. P. 366; 33 Digest 82, 530; *Bower v. Sligo Commissioners* (1) (1869), I. R. 4 C. L. 489; 33 Digest 82, 530 *ii*.

(*h*) *A.-G. v. London and Home Counties Joint Electricity Authority*, [1929] 1 Ch. 518; Digest (Supp.).

(*i*) *Bateman v. Ashton-under-Lyne Corpn.* (1858), 3 H. & N. 323; 13 Digest 356, 926.

(*k*) *The Times Newspaper*, May 2, June 6, 24, July 2, 1878.

(*l*) *A.-G. v. Blackburn Corpn.* (1887), 57 L. T. 385; 33 Digest 85, 548.

(*m*) *A.-G. v. Cardiff Corpn.*, [1894] 2 Ch. 337; 33 Digest 86, 553.

(*n*) *A.-G. v. Batley Corpn.* (1872), 26 L. T. 392; 33 Digest 71, 454.

(*o*) *Roberts v. Hopwood*, [1925] A. C. 578; 33 Digest 20, 83; *Roberts v. Cunningham*, [1925] W. N. 289; 33 Digest 40, 220.

(*p*) *R. v. Ramsgate Corpn.* (1889), 23 Q. B. D. 66; 33 Digest 16, 59.

(*q*) *R. v. Vaile* (1889), 23 Q. B. D. 483; *sub nom. R. v. Whiteley*, 58 L. J. M. C. 164, D. C.; 33 Digest 59, 356.

(*r*) *R. v. Cumberlege* (1877), 2 Q. B. D. 366.

(*rr*) *In re Audit (Local Authorities) Act*, 1927, *Re Magrath*, [1934] 2 K. B. 415.

(*s*) *Galsworthy v. Selby Dam Drainage Comrs.*, [1892] 1 Q. B. 348; *sub nom. R. v. Selby Drainage Comrs.*, 56 J. P. 856, C. A.; 13 Digest 361, 963.

It is interesting to note that expenditure in conveying members of a council within their own district in the performance of their duties as councillors has been disallowed on the ground that there is no authority in law for such a payment (t). [619]

The restrictions imposed by the doctrine upon the payment of legal expenses are referred to in a number of cases (u) which deserve a more lengthy analysis. The present powers of local authorities (a) are wide, but further explanation of the decision in *A.-G. v. Fleetwood U.D.C.* (b) would be welcome. Here the council submitted without serious contest to an injunction restraining it from agreeing to share in the legal costs of an action fought by another authority, in the result of which the council was vitally interested.

Amongst other matters affecting the restrictions imposed by the doctrine upon expenditure, it may be mentioned that moneys in a fund set aside by a local authority for some special purpose authorised by statute cannot be transferred to the general rate fund and used for another purpose, even though that purpose may be a proper function of the authority (c). [620]

Power to borrow money is necessary for three reasons :

- (1) it is obviously unreasonable to expect a local authority to discharge all its functions on a strictly cash basis, and for everyday requirements it is essential to incur debts ; it is arguable that this is a form of borrowing (though according to judicial opinion (d) the two may be distinguished) ;
- (2) much expenditure has to be incurred in advance of the receipt of revenue ; and
- (3) it is inequitable that considerable capital expenditure on matters likely to endure for the benefit not only of present but of future ratepayers for some time to come should be charged wholly upon the rates during the year in which the expenditure is incurred (e).

As may be seen from the restrictions upon borrowing, the power to incur debts is strictly limited to those incurred *bona fide* and not in respect of any acquisition in excess of the corporation's reasonable requirements. Current accounts may be run with tradespeople and customary arrangements as to payment and compromise adopted.

In the absence of express or clearly implied power, a local authority has no power to incur any liability on a bill of exchange or a promissory

(t) *R. v. Dolby, Ex parte Northfield* (1902), 66 J. P. 521 ; 33 Digest 41, 221. Note, however, in relation to travelling expenses of members of county councils, the L.G.A., 1933, s. 294 ; 26 Halsbury's Statutes 462, and *Glamorgan County Council v. Ayton* (1936), 100 J. P. 433 ; Digest (Supp.) ; the section does not extend to the payment of a subsistence allowance.

(u) *R. v. Lichfield Town Council* (1843), 4 Q. B. 893 ; 33 Digest 82, 525 ; *R. v. Lichfield Town Council* (1847), 10 Q. B. 534 ; 33 Digest 81, 513 ; *Lewis v. Rochester Corpn.* (1860), 9 C. B. (N. S.) 400 ; 13 Digest 364, 984 ; *Reddish v. Hitchinor* (1878), 43 J. P. 41 ; 33 Digest 373, 315 ; *R. v. Liverpool Corpn.* (1872), 41 L. J. (Q. B.) 175 ; 33 Digest 83, 536 ; *Tynemouth Corpn. v. A.-G.*, [1899] A. C. 293 ; 33 Digest 83, 539 ; *Davies v. Cowperthwaite* (1938), 102 J. P. 405 ; Digest (Supp.).

(a) L.G.A., 1933, s. 276 ; 26 Halsbury's Statutes 452.

(b) (1908), 72 J. P. 120.

(c) *A.-G. v. Oldham Corpn.* (1936), 100 J. P. 395 ; Digest (Supp.).

(d) *Re Cefn Cilcen Mining Co.* (1868), L. R. 7 Eq. 88 ; 10 Digest 731, 4575 ; *Waterlow v. Sharp* (1869), L. R. 8 Eq. 501 ; 10 Digest 736, 4605 ; and other cases.

(e) For a method by which borrowing may be avoided without imposing a large capital expenditure upon the ratepayers in one year, see *A.-G. (Martin) v. Finsbury Corpn.* (1939), 103 J. P. 357 ; Digest (Supp.).

note, though it may transfer the property in such a document by indorsement (f). This, however, does not prevent the authority from drawing cheques at a bank (g). [621]

Though express power is available to borrow pending receipt of revenue from rates or the raising of a loan already authorised (h) numerous cases have laid down the rule that it is otherwise *ultra vires* of a local authority, after having exhausted its statutory borrowing powers, to borrow by means of bank overdrafts (i). It follows that it is *ultra vires* to pay interest on such an overdraft. In spite of the above-mentioned limitations and of the fact that numerous express borrowing powers (normally exercisable only with the consent of a Minister of the Crown) are available (k) the existence of implied powers of borrowing is not impossible (l), though it is laid down in *R. v. Reed* (m) that the existence of express statutory borrowing power negatives any implication of other powers.

Normally, all moneys borrowed by a local authority must be charged indifferently upon the revenues of the authority (n), but in two cases money may be borrowed on the mortgage of land (o). Since an express borrowing power negatives an implied one it may be suggested that it is *ultra vires* for a local authority to acquire land subject to an existing mortgage, intending to pay it off subsequently out of revenue.

Before 1934, the onus was upon the lender to ascertain that the borrowing was not *ultra vires* the local authority, but he is now not bound to inquire whether the borrowing is legal or whether the money raised is properly applied (p). This provision, which only affects local authorities to which the L.G.A., 1933, applies and metropolitan borough councils, is, other than in relation to inquiries as to the proper application of the money borrowed (q), contrary to the general rule, which is otherwise without express exception, that if the transaction is *ultra vires*, then the contract by which money is lent is void and no action can

(f) Bills of Exchange Act, 1882, s. 22; 2 Halsbury's Statutes 45. A local authority is a non-trading corporation, even as regards its so-called trading undertakings: *Broughton v. Manchester and Salford Waterworks Co.* (1819), 3 B. & Ald. 1; 3 Digest 182, 76 (water undertaking); *Bramah v. Roberts* (1887), 3 Bing. (N. C.) 968; 9 Digest 480, 3147 (gas undertaking).

(g) *Serrell v. Derbyshire, etc., Rail. Co.* (1850), 9 C. B. 811; 10 Digest 1175, 8336; *Bateman v. Mid-Wales Rail. Co.* (1866), L. R. 1 C. P. 499, 506.

(h) L.G.A., 1933, ss. 215, 216; 26 Halsbury's Statutes 422, 423.

(i) *A.-G. v. De Winton*, [1906] 2 Ch. 106; 33 Digest 77, 497; *A.-G. v. West Ham Corp.*, [1910] 2 Ch. 560; 33 Digest 88, 581; *A.-G. v. Tottenham U.D.C.* (1909), 73 J. P. 487; 33 Digest 18, 70.

(k) See the L.G.A., 1933, Part IX.; 26 Halsbury's Statutes 301, and numerous other Acts.

(l) *Payne v. Brecon Corp.* (1858), 3 H. & N. 572; 33 Digest 90, 606; *Newcastle-upon-Tyne Corp. v. A.-G.*, [1892] A. C. 568; *affg. S. C. sub nom. A.-G. v. Newcastle-upon-Tyne Corp. and North Eastern Rail. Co.* (1889), 23 Q. B. D. 492; 33 Digest 85, 550; *Galsworthy v. Selby Dam Drainage Comrs.*, [1892] 1 Q. B. 348; *sub nom. R. v. Selby Drainage Comrs.*, 56 J. P. 356, C. A.; 13 Digest 861, 963.

(m) (1880), 5 Q. B. D. 483; 13 Digest 360, 954.

(n) L.G.A., 1933, s. 197 (1); 26 Halsbury's Statutes 413.

(o) Under the L.G.A., 1933, s. 172 (3), a municipal corporation may, with the consent of the M. of H. (as to which see *Davis v. Leicester Corp.*, [1894] 2 Ch. 208; 33 Digest 52, 314), mortgage corporate land, and under the P.H.A., 1936, s. 310; 29 Halsbury's Statutes 519, a local authority may borrow for public health purposes upon the security of sewage disposal works. This latter seems to be the only one by the exercise of which a local authority can lawfully prevent itself from carrying out its functions.

(p) L.G.A., 1933, s. 203; 26 Halsbury's Statutes 416; London Government Act, 1939, s. 144; 32 Halsbury's Statutes 326.

(q) *Re David Payne & Co., Ltd.*, *Young v. David Payne & Co., Ltd.*, [1904] 2 Ch. 608, C. A.; 10 Digest 741, 4628.

lie upon it (*r*) and it cannot be ratified (*s*). The effect of the provision is as yet obscure, since there has been no case before the courts, but presumably the lender will now be able to bring an action for recovery, unless he is aware of the illegality. [622]

Application to the Power to Contract.—Closely analogous to the matters dealt with in the previous section is the effect of the doctrine upon the contractual powers of a local authority, because wherever there is a contractual relation there is usually also expenditure of money.

The basic proposition is as follows :

“A corporation is as fully capable of binding itself by contract as an individual, except as to those contracts which from the nature or object of the corporation, or from the express or implied terms of its constitution, it is prohibited from making (*t*).” [623]

The contractual ability of a local authority may be limited in either of two ways, namely, by the imposition of restrictions upon the corporation's contractual capacity; (2) by the necessity of complying with certain formalities before a valid contract can arise.

Limitations arising through lack of contractual capacity are many and varied.

A local authority may be precluded from entering into certain contracts because of its very nature or of its formation. This may be deduced from the converse of the power given by the L.G.A., 1933, s. 266, to enter into all contracts necessary for the discharge of any of the local authority's functions.

Where a corporation is of statutory creation, its contractual powers are limited strictly by the statute creating it (*u*), though it is now established that it can also do such other things as are necessarily and properly required for the purposes of its incorporation (*a*).

A contract apparently within the scope of a local authority's functions will only be held void if, on its face, it is unreasonable; otherwise it will be binding, even if improvident (*b*). [624]

Closely allied to contracts *ultra vires* because they are contrary to the nature of a local authority are those which purport to do something either directly or impliedly prohibited by statute (*c*).

Other types of limitation are more complex. Apart from contracts expressly prohibited by statute, any contract of a local authority which

(*r*) Cf. *Royal British Bank v. Turquand* (1855), 5 E. & B. 248; (1856), 6 E. & B. 327; 10 Digest 740, 4623, which could be applied to inquiries as to a local authority's compliance with its own standing orders.

(*s*) *Ashbury Rail. Carriage & Iron Co. v. Riche* (1875), L. R. 7 H. L. 653; 13 Digest 354, 922. But cf. *Sinclair v. Brougham*, [1914] A. C. 398, *affg. sub nom. Re Birkbeck Permanent Benefit Building Society*, [1912] 2 Ch. 183, C. A.; 12 Digest 282, 2317, and *Banque Belge pour L'Etranger v. Hambrouck*, [1921] 1 K. B. 321; 35 Digest 168, 9.

(*t*) 8 Halsbury (2nd ed.), p. 96. See, however, *York Corpn. v. Henry Leatham & Sons*, p. 268, *post*.

(*u*) *Wenlock (Baroness) v. River Dee Co.* (1883), 36 Ch. D. 675, n.; (1885), 10 App. Cas. 354, H. L.; 13 Digest 367, 1002, *per* Lord Watson, at p. 362, overruling in effect the view expressed by BLACKBURN, J., in *Taylor v. Chichester and Midhurst Rail. Co.* (1867), L. R. 2 Exch. 356; *revsd.* (1870), L. R. 4 H. L. 628; 13 Digest 356, 929.

(*a*) See, for example, *S. Pearson & Son, Ltd. v. Dublin & South Eastern Rail. Co.*, [1909] A. C. 217; 38 Digest 380, 775.

(*b*) *New Windsor Corpn. v. Stovell* (1884), 27 Ch. D. 665; 13 Digest 358, 937; *Taff Vale Rail. Co. v. Macnabb* (1873), L. R. 6 H. L. 169; 38 Digest 251, 15; *Municipal Mutual Insurance, Ltd. v. Pontefract Corpn.* (1917), 116 L. T. 671; 13 Digest 358, 938.

(*c*) See, for instance, the Trade Disputes and Trade Unions Act, 1927, s. 6 (2); 19 Halsbury's Statutes 749, and *Field v. Poplar Corpn.*, [1929] 1 K. B. 750; Digest (Supp.)

purports to free that authority from either a statutory or a common law obligation is, generally speaking, void; but in the absence of express prohibition, the authority may show that such a contract is in fact reasonable and valid (*d*). It is, for example, often the practice when acquiring land under a statute incorporating the Lands Clauses Acts to contract out of the provisions of sect. 128 of the 1845 Act (*e*) (which gives a right of pre-emption to the person owning the land from which that acquired was severed), and such a contract will normally be held to be reasonable. [625]

Cases in which a local authority purports to contract not to exercise its statutory powers, to deprive itself of the right to exercise its statutory powers, or to grant monopoly rights, are common. The principles involved are similar.

As a general proposition, where powers are conferred upon a local authority, which powers are exercisable for the public good, then the authority must not and cannot contract that it will not exercise those powers (*f*). Compare this, however, with the suggestion (*post*) that an authority may, in purchasing land, restrict itself to using the land for certain only of the purposes for which it may lawfully acquire land (*g*). The distinction is not clear. Furthermore, other doubts have been cast upon the proposition, so far as it concerns the commercial dealings of local authorities in connection with authorised functions (*h*). However, in *York Corpn. v. Henry Leatham & Sons* (*i*), RUSSELL, J., confirmed and to some extent extended the proposition in a way difficult to reconcile with the *Hastings Case* (*h*), but fortunately the position was fully considered shortly afterwards by the House of Lords in *Birkdale District Electric Supply Co., Ltd. v. Southport Corpn* (*j*). The position now seems to be that so far as ordinary commercial and contractual dealings of statutory bodies take place in connection with the purposes for which they were constituted, the doctrine of *ultra vires* will not be rigidly applied. Whether or not this is a desirable conclusion is doubtful, for it may well be said that some restrictions upon the contractual powers of local authorities in relation to their trading undertakings and also to other public undertakings should remain,

(*d*) *Joshua Buckton & Co., Ltd. v. London & North Western Rail. Co.* (1917), 87 L. J. (K. B.) 234; 8 Digest 59, 390; *Sutcliffe v. Great Western Rail. Co.*, [1910] 1 K. B. 478; 8 Digest 62, 416; *Doolan v. Midland Rail. Co.* (1877), 2 App. Cas. 792; 8 Digest 20, 370.

(*e*) 2 Halsbury's Statutes 1159.

(*f*) *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623, H. L.; 11 Digest 103, 4. *Vide* Lord BLACKBURN, at p. 634:

"I think that where the legislature confers powers on any body to take lands compulsorily for a particular purpose, it is on the ground that the using of that land for that purpose will be for the public good. Whether that body be one which is seeking to make a profit for shareholders or, as in the present case, a body of trustees acting solely for the public good, I think in either case the powers conferred on the body empowered to take the land compulsorily are intrusted to them and their successors, to be used for the furtherance of that object which the legislature has thought sufficiently for the public good to justify it in intrusting them with such powers, and, consequently, that a contract purporting to bind them and their successors not to use those powers in void."

See also *Brown v. Dagenham U.D.C.*, [1929] 1 K. B. 737; Digest (Supp.), the decision in which has now, however, been superseded by s. 121 (1) of the L.G.A., 1933; 26 Halsbury's Statutes 370.

(*g*) *Williamson v. Sunderland Corpn.* (1892), 9 T. L. R. 143; 40 Digest 310, 2655; *A.-G. v. Blackpool Corpn.* (1928), 26 L. G. R. 160; Digest (Supp.).

(*h*) *A.-G. v. Hastings Corpn.* (1902), 67 J. P. 165; 13 Digest 366, 992.

(*i*) [1924] 1 Ch. 557; Digest (Supp.).

(*j*) [1926] A. C. 355; Digest (Supp.). The judgment of Lord SUMNER in this case reviews all the authorities in a manner which prevents an adequate summary.

since they exist for the public benefit and the public are concerned, both practically and financially, should an authority fetter itself by what might turn out to be an extremely burdensome contract.

Another aspect of the principle referred to concerns the power of an authority to grant monopoly rights. The matter has frequently arisen in recent years in connection with the grant of consents to the erection of overhead wires in connection with wireless relay services (*k*), and some authorities have purported to grant a monopoly to an individual or body to supply these services, not only by exercising their power of refusing all other applications of a similar nature, but by contracting with the individual or body concerned, in many cases for a monetary payment, not to allow any other wires to be erected for that purpose. There is no decided case on the point, but from careful analysis the author is of opinion that while the authority may refuse any or all applications as it pleases, subject to the applicant's right of appeal under s. 7 of the same Act, it may not contract with one applicant that it will grant no further applications, since this would be in derogation of its statutory powers. Except where a monopoly is granted in the ordinary way of trade, *e.g.* a contract to obtain for a period at a certain price all goods of a certain type which the authority requires (which would presumably be *intra vires*), it seems that such a grant is not validated by the decision in *Birkdale Electric Supply Co. v. Southport Corpn.* (*l*). [626]

If a local authority is applying or proposes to apply to Parliament for additional powers, it is not *ultra vires* to enter into a contract which would be authorised by the powers which it is hoped to obtain, so long as the powers are subsequently obtained and the contract is made conditional upon the grant of those powers (*m*). Following upon this, it is within the powers of a local authority, and in fact is the usual practice, to enter into a contract for the purchase of land, conditional upon the grant of consent by the M. of H. to the proposed purchase, where such consent is essential to the validity of the purchase.

Apart from the question whether or not a local authority may contract not to use its statutory powers, it is well settled that the courts will not compel an authority to do an act (other than a duty imposed by statute) even if, in fact, it is partially completed and is for the public good.

Where part of a contract (or even of a resolution) of a local authority is bad because it is *ultra vires*, the part which is good may be severed from the rest and will be valid, unless it is an integral part of and cannot be severed from the whole (*n*). This rule should be distinguished from cases where part of the consideration for an agreement is illegal, for then the whole agreement is illegal (*o*).

It may be noted that gratuitous agreements are, in general, *ultra vires* (*p*), though there may be exceptions to this (*q*). [627]

(*k*) P.H.A., 1925, s. 25; 13 Halsbury's Statutes 1123.

(*l*) See note (*j*), *ante*, p. 268.

(*m*) *Taylor v. Chichester and Midhurst Rail. Co.* (1870), L. R. 4 H. L. 628; 13 Digest 356, 929.

(*n*) *Pickering v. Ilfracombe Rail. Co.* (1868), L. R. 3 C. P. 235; 10 Digest 1182, 8383; though this case conflicts with the earlier decision of *Kindersley, V.-C. in Hattersley v. Shelburne (Earl)* (1862), 31 L. J. (Ch.) 873; 10 Digest 1130, 7963.

(*o*) *Featherston v. Hutchinson* (1590), Cro. Eliz. 199; 12 Digest 291, 2395; *Pearce v. Brooks* (1866), L. R. 1 Exch. 213; 12 Digest 264, 2156.

(*p*) *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611; 11 Digest 121, 139; *Aylott v. West Ham Corpn.*, *Sisson v. West Ham Corpn.*, [1926] 1 Ch. 30; 34 Digest 85, 628; *A.-G. v. Tynemouth Union*, [1930] 1 Ch. 616; Digest (Supp.).

(*q*) *Normandy v. Ind, Coope & Co., Ltd.*, [1908] 1 Ch. 84; 9 Digest 537, 3536, *per*

Limitations arising from the necessity of complying with formalities are nowadays concerned largely with the use of the corporate seal. Before June 1, 1934 (*r*), the situation was complicated by the fact that different rules applied to the contracts of different types of local authorities. For instance, contracts of borough and urban district councils entered into in relation to matters arising under the Public Health and Housing Acts had to be under seal if their amount or value exceeded £50 (*s*). Similar provisions were contained in a number of other Acts. Contracts of other authorities and of borough and urban district councils when not acting under these Acts were subject to the common law rules relating to the subject. The L.G.A., 1933 (*t*), repealed sect. 174 of the P.H.A., 1875, without re-enactment, "thus assimilating the position of urban authorities when exercising public health or housing powers to that of county, rural district and parish councils, and to that of the urban authorities themselves when acting *e.g.* as local education authorities (*u*)."
[628]

The common law rule (with its exceptions) which now applied to local authorities to which the L.G.A., 1933, applies and, in the absence of special statutory provision, to all other local authorities, is as follows :

Any agreement made or entered into by a local authority, unless specially exempted by statute, must be under the seal of the local authority (*a*), except :

- (1) in the case of a contract of a trivial nature, that is, one which is too insignificant to be worth the trouble of affixing the common seal (*b*) ;
- (2) in the case of contracts for matters which are very frequently recurring, so that it would again not be worth the trouble of affixing the common seal each and every time the matter in question arose (*b*) ;
- (3) where work is done or services are rendered at the request of the corporation in respect of matters for the doing of which it was created, whether essential to its purposes or otherwise, and the benefit of the work or services is accepted by the corporation, so that a contract to pay would be implied in the case of a private person, a similar implication would be made in the case of a corporation, in spite of the fact that there is no seal (*c*) ;

KEREWICH, J., at p. 102 ; and see, for example, the Poor Law Act, 1930, s. 67 ; 12 Halsbury's Statutes 100, and the P.H.A., 1936, s. 181 (3) ; 29 Halsbury's Statutes 448.

(*r*) The date when the L.G.A., 1933, came into force. See s. 308 ; 26 Halsbury's Statutes 470.

(*s*) P.H.A., 1875, s. 174 (repealed) ; Housing Act, 1925, s. 57 (3) (repealed) ; *Nixon v. Erith U.D.C.*, [1924] 1 K. B. 819 ; Digest (Supp.) ; *W. Higgins, Ltd. v. Northampton Corpn.*, [1927] 1 Ch. 128 ; 35 Digest 101, 87.

(*t*) Sched. XI, Part I. ; 26 Halsbury's Statutes 516.

(*u*) Local Government and Public Health Consolidation Committee, Interim Report, 1933, pp. 61 *et seq.*

(*a*) *Ludlow Corpn. v. Charlton* (1840), 9 C. & P. 242, N. P. ; subsequent proceedings, 6 M. & W. 815 ; 13 Digest 278, 86, *per* ROLFE, B. ; *Austin v. Bethnal Green Guardians* (1874), L. R. 9 C. P. 91 ; 13 Digest 382, 1114, *per* COLERIDGE, C.J.

(*b*) *Austin v. Bethnal Green (Guardians)*, *supra*, confirming the principle established in *Church v. Imperial Gas Light and Coke Co.* (1838), 6 Ad. & El. 846 ; 13 Digest 285, 169, and adopted in *Ludlow Corpn. v. Charlton*, *supra*.

(*c*) *Lawford v. Billericay R.D.C.*, [1903] 1 K. B. 772 ; 13 Digest 394, 1193. Since this case relief has been given upon a *quantum meruit* where part of certain work and services were completed : *Hodge v. Mallock Bath and Scarthin Nick U.D.C. and Nuttall*

- (4) the doctrine of part performance will operate in equity in the same manner as if the corporation was an individual (d).

It may be argued that the fourth exception is not an exception at all, since ultimately there is executed a document under seal. It is submitted, however, that it does in fact constitute an exception, for equity recognises the existence of a contract and will enforce it, although it does require a sealed contract to be completed for that purpose. [629]

As to other formalities, sect. 266 (2) of the L.G.A., 1938 (e), provides that all contracts made by a local authority are to be made in accordance with the standing orders of the local authority. This provision is, however, directory only, for a person contracting with a local authority is not bound to inquire whether the standing orders have been complied with, and even a contract which is entered into with full knowledge by all parties that the standing orders have not been complied with will yet be valid, so long as the contract is not affected by the restrictions imposed by the doctrine of *ultra vires*. Non-compliance with a local authority's standing orders does not, therefore, render a contract *ultra vires*.

Other formalities, e.g. the necessity to obtain the consent of a Government department in cases where the acquisition of land is subject to such a consent, do not require special discussion, but the general principles of the doctrine apply, and failure to obtain a necessary consent will render a contract *ultra vires*. [630]

The cure for failure to seal a contract requiring a seal is to execute a new contract under seal (f) and this is the distinction between contracts *ultra vires* because of lack of contractual capacity and those *ultra vires* because of failure to comply with an essential formality. Complications arise where the contract has been partially or wholly executed before the seal is affixed. In a case where a contract had been partially executed before the seal was affixed the original defect was held to be cured by the subsequent sealing, since the completion of the work was held to be a sufficient consideration (g). This was later extended to contracts whose consideration was wholly executed, on the grounds that a promise under seal, whether made for a past consideration or without consideration, is binding and as it was not *ultra vires* for the local authority to pay for the work of which they had had the benefit, it could not be *ultra vires* for them to bind themselves to pay by an instrument under seal (f).

It has been suggested that lack of formality does not render a contract *ultra vires*, since it is not concerned with the power whence the corporation derived contractual capacity. This view is not subscribed

(1910), 74 J. P. 374; (1911), 75 J. P. 65; 13 Digest 395, 1194; *Douglass v. Rhyl U.D.C.*, [1918] 2 Ch. 407; 13 Digest 386, 1135; *Faraday v. Tamworth Union* (1916), 81 J. P. 81; 13 Digest 380, 1103.

(d) *Crook v. Seaford Corpn.* (1871), L. R. 6 Ch. App. 551; 13 Digest 36, 1207. Cf. *Kidderminster Corpn. v. Hardwick* (1873), L. R. 9 Exch. 13; 13 Digest 390, 1163, where, although an agreement was signed and a deposit paid, but there was no part performance. Note also that equity has no jurisdiction in monetary claims for goods or services, so that although the third exception may be applicable, as in *Hodge v. Matlock Bath and Scarthin Nick U.D.C.*, note (c), *supra*, there can be no claim on the ground of part performance: *Crampton v. Varna Rail. Co.* (1872), L. R. 7 Ch. App. 562; 13 Digest 398, 1212.

(e) 26 Halsbury's Statutes 447.

(f) *Brooks, Jenkins & Co. v. Torquay Corpn.*, [1902] 1 K. B. 601; 13 Digest 390, 1165; this is not the same as ratification.

(g) *Melliss v. Shirley Local Board* (1885), 14 Q. B. D. 911; reversed (1885), 16 Q. B. D. 446, upon another point; 12 Digest 274, 2236.

to, since a local authority cannot enter into a valid contract without complying with the requisite formalities, thus, it is submitted, invoking the principles of the doctrine. It has also been suggested (*h*) that an unsealed contract is not void but unenforceable, but the view is put forward that to cure the defect by executing a contract under seal (except where the execution of a sealed contract is ordered by the court in an action for specific performance) is to execute a new contract to replace that avoided, and is not to render enforceable an unenforceable contract. [681]

Application to the Acquisition of, and Dealings in, Property.—Originally there was no restriction upon the right of a corporation to acquire property, real or personal, but from the time of Edward I. various mortmain Acts prevented a corporation from acquiring land without licence from the Crown. Land assured to a corporation without such licence is forfeited to the Crown, but the title of the Crown is not complete until entry and, in the event of failure to enter, the corporation may retain the land and the title becomes good as against the Crown after sixty years (*i*).

The law of mortmain has now, however, only a limited application to the acquisition of land by local authorities, and no licence is required where the land is acquired for any purpose for which the local authority has by Act of Parliament power to acquire land (*k*). Almost all land held by local authorities is now held by virtue of statutory authority.

Parliament's usual procedure, so far as local authorities are concerned, has in the past been to grant power to acquire land for specific purposes only, and it was not until the L.G.A., 1933, that a general power to acquire land for the purpose of any of a local authority's functions was given to local authorities by public general Act. Under that Act, however, not only may a local authority acquire land by agreement "for the purpose of any of their functions under this or any other public general Act" (*l*) but, with the consent of the M. of H. it may acquire land notwithstanding the fact that it is not immediately required for the purpose in question; pending user for that purpose it may be held and used for the purpose of any of the authority's functions (*m*). This general power does not extend to the acquisition of land for purposes arising out of a local Act. [632]

Some municipal corporations have by charter additional powers of acquisition, but in such cases the law of mortmain will apply. In the absence of such a power a municipal corporation may, with the consent of the M. of H., acquire land by agreement to be held as part of the corporate estates of the borough, and this land need not immediately be appropriated to any particular purpose (*n*).

Furthermore, gifts of property, real or personal, may be accepted,

(*h*) *R. v. Norwich Corpn.* (1882), 40 J. P. 308; 13 Digest 363, 978. See also *R. v. Prest* (1850), 16 Q. B. 32; 13 Digest 364, 983, and *Bournemouth Comrs. v. Watts* (1884), 14 Q. B. D. 87; 13 Digest 385, 1133.

(*i*) Mortmain and Charitable Uses Act, 1888; 2 Halsbury's Statutes 385; Crown Suits Act, 1769; 10 Halsbury's Statutes 433.

(*k*) Mortmain and Charitable Uses Acts, 1888 and 1892; 2 Halsbury's Statutes 385, 398. "Local authority" is defined by s. 2 of the 1888 Act as "any county council, council of a municipal borough, sanitary authority, or any body having power to make a rate for public purposes, or by the issue of any precept, certificate or other document to require payment from some authority or officer of money which may render necessary the making of any such rate."

(*l*) L.G.A., 1933, s. 157; 26 Halsbury's Statutes 391.

(*m*) *Ibid.*, s. 158; *ibid.*, 392.

(*n*) *Ibid.*, s. 171; *ibid.*, 400.

held and administered by a local authority for any local public purpose or for the benefit of the inhabitants (o).

It will be noticed that in some cases consents of Government departments are a necessary preliminary to the purchase of land, and acquisition without such consent is *ultra vires*. Where no consent is necessary, but it is desired to defray any part of the cost of acquisition out of loan, control can in practice often be exercised by the Government, though refusal of consent to borrow will only render *ultra vires* the raising of a loan and, if thought fit, the expenditure may still be defrayed out of revenue. [633]

Though the acquisition of land is so strictly controlled by the doctrine of *ultra vires*, a local authority may sometimes be compelled by force of circumstances to acquire more than is actually required for the authorised purpose (p), or may even find it advantageous to do so, where by selling the surplus it may be reimbursed, either wholly or in part. It seems that in certain circumstances this course may be valid (q).

Powers to acquire land compulsorily are limited, and where power is given to acquire land compulsorily for a specific purpose the land may not be taken for any other purpose (q). Two forms of procedure are available, though not for every purpose for which compulsory powers are available, *i.e.* by way either of a compulsory purchase order confirmed by the appropriate authority, or of a provisional order confirmed by Parliament. Details of both these procedures may be found elsewhere. [634]

So far as personality is concerned, both statute and case law are distressingly silent.

It was long ago held that a corporation aggregate generally had unlimited power to acquire and hold personal property of every kind (r), but the same cannot truly be said of local authorities. So far as leasehold land is concerned, the position is governed by the statutory rules relating generally to the acquisition of land (s). Apart from leaseholds, from general principles it is probable that power to acquire personality (other than by gift) (t) is restricted to that necessary or reasonably required for carrying out the functions of the authority. Other statutory powers available include power to levy rates, but specific powers to acquire chattels are uncommon and in order to ascertain the validity of any transaction it is usually necessary to ascertain whether expenditure on that object is or is not within the authority's powers.

The effect of the doctrine upon the powers of a local authority to use and to dispose of property is of great interest. So far as user is concerned two aspects of the doctrine are concerned :

- (1) a local authority may not spend money on property—in, for example, its upkeep and repair—except for authorised purposes ;

(o) L.G.A., 1933, s. 268 ; 26 Halsbury's Statutes 449.

(p) As, for example, when exercising compulsory powers, see L.G.A., 1933, Sched. VI. ; 26 Halsbury's Statutes 508.

(q) *Galloway v. London Corpn.* (1866), L. R. 1 H. L. 34 ; 11 Digest 117, 109. See also the P.H.A., 1925, s. 83 ; 13 Halsbury's Statutes 1153.

(r) *Fuwood's Case* (1591), 4 Co. Rep. 64b ; 13 Digest 372, 1037.

(s) But see *Re London and Colonial Co., Horsey's Claim* (1868), L. R. 5 Eq. 561 ; 9 Digest 665, 4424, and *Truro Corpn. v. Rowe*, [1902] 2 K. B. 709, C. A. ; 13 Digest 371, 1027.

(t) L.G.A., 1933, s. 268 ; 26 Halsbury's Statutes 449.

- (2) the property of a local authority may not be used, even where the expenditure of money is not involved, except for authorised purposes. [685]

Restrictions upon expenditure have already been discussed. Restrictions upon user, whether or not expenditure is involved, have usually arisen from the statute giving the power of acquisition, for the power has normally been to acquire property for specified purposes only. This principle, however, has to a great extent had to be abandoned since the grant of general acquisitive powers by the L.G.A., 1938. Where land is acquired under this Act it is necessary, in order to determine the validity of the acquisition, not to examine the enabling statute but to determine whether the purpose for which the land was acquired is a lawful function of the local authority.

The restrictions imposed by the doctrine are very strict and have been held to prevent a local authority from letting a recreation ground to a football club, even for one day (*u*). In another case a local authority purchasing land under powers permitting acquisition for the purposes of public walks or pleasure grounds (*a*) decided to erect town buildings, a museum, public library, school of art and a conservatory (*b*). In the High Court, only the erection of the museum and conservatory was held *intra vires*, though on appeal the right to erect a free library was allowed, on the ground that it was conducive to the better enjoyment of the public walks and grounds as such. User for any other purpose of land acquired as parks and pleasure grounds will nearly always be restrainable, as before appropriation can take place it will be necessary to show that there is no longer any need for the pleasure ground and this may well be a difficult task. [686]

Where land is acquired in advance of requirements it may temporarily be used for the purpose of any of the local authority's functions. A common practice is to let the land until it is required under sect. 164 of the L.G.A., 1938 (*c*), and this section is, therefore, in extension of sect. 158 because the leasing of land is not user, but a species of alienation. Its effect is to dispose, for the period of the lease, of a part of the local authority's interest in the land.

User of land may be restricted in other ways than those arising out of the statute authorising or affecting the acquisition, *e.g.* by restrictions imposed by the vendor or donor or by a predecessor in title and contained in the conveyance, or by the action of the authority itself.

So far as personalty (except chattel interests in land) is concerned, the interest of the local authority in its property is absolute and the mode of user cannot be restricted, so as to invoke the doctrine of *ultra vires*, by reason of the contemplation of a particular user in the mind of either party at the time of acquisition, though a sale or gift to a local authority may be the subject of a trust and in that event failure to observe its terms would be a breach of trust. In other words, though it may not be *ultra vires* to use the property for a purpose not contemplated by the trust, the local authority can be restrained from so doing. [687]

The question of land is more difficult. Although land which is no

(*u*) *A.-G. v. Loughborough Local Board* (1881), *The Times Newspaper*, May 31.

(*a*) P.H.A., 1848 (the provision corresponding to s. 164 of the P.H.A., 1875).

(*b*) *A.-G. v. Sunderland Corpn.* (1876), 2 Ch. D. 684; 11 Digest 120, 133.

(*c*) 28 Halsbury's Statutes 397.

longer required for the purpose for which it was acquired may be appropriated to any other purpose, approved by the M. of H., for which the local authority is authorised to acquire land, such appropriation is subject to several restrictions, of which the most important is that the appropriation is subject to any covenant or restriction affecting the use of the land (d). "Restriction," in the phrase "any covenant or restriction," refers to matters analogous to the word "covenant" and cannot be intended to apply, for example, to restrictions on user imposed by the statute authorising acquisition, for it is to overcome these restrictions that the power to appropriate is given.

That a local authority may buy land subject to covenants restricting its user is clear. In one case (e) a covenant to keep land purchased by agreement as an open space free from buildings other than those specifically mentioned in the covenant was held to prevent the authority from erecting lavatories. [638]

All statutes passed since 1845 (f) which authorise the acquisition of land, automatically incorporate (unless they specifically exclude) the provisions of the Lands Clauses Acts. Certain provisions of these Acts apply to land acquired by agreement and others to land acquired compulsorily. Among the provisions applying to compulsory acquisition is one having the effect of releasing the acquiring authority from any covenant which would prevent user in accordance with the authority's statutory powers, and substituting a right to compensation for the benefit of the covenantee (g). It has been held (h) that this rule also applies to voluntary acquisitions, unless the special Act specifically excludes the provisions relating to compulsory acquisition (i). Sect. 176 of the L.G.A., 1933 (k), excepts the provisions of the Act of 1845 relating to the acquisition of land otherwise than by agreement, in the case of land acquired by agreement under the Act of 1933, but it can be argued that it does not expressly exclude sect. 68 (l). Whether or not *Kirby v. Harrogate School Board* (h) will apply to purchases under the L.G.A., 1933, has not yet been decided, but the author's opinion (m) is that it will not, and that in voluntary acquisitions a local authority will be bound by covenants running with the land purchased.

In passing, it may be noted that the dedication of land to the public as a highway is not necessarily inconsistent with the functions of the authority and may consequently be *intra vires* (n). [639]

Local authorities, e.g. highway authorities, sewage and disposal authorities, river conservators, etc., often have power to use land of which they are neither the owners or tenants. In the case of highways, for instance, there vests in the highway authority the "area of user," viz. so much of the soil and sub-structure as is necessary to enable the

(d) L.G.A., 1933, s. 163; 26 Halsbury's Statutes 396.

(e) *Stourcliffe Estates Co., Ltd. v. Bournemouth Corpn.*, [1910] 2 Ch. 12; 33 Digest 51, 307. Cf. *A.-G. v. Poole Corpn.* (1937), 101 J. P. 498; Digest (Supp.).

(f) *Re Mills' Estate, Ex parte Comrs. of Works and Public Buildings* (1886), 34 Ch. D. 24; 51 J. P. 151; 11 Digest 254, 1597; *Re Cherry's Settled Estate* (1862), 4 De G. F. & J. 332; 11 Digest 253, 1595.

(g) Lands Clauses Consolidation Act, 1845, s. 68; 2 Halsbury's Statutes 1134.

(h) *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 11 Digest 145, 297.

(i) *Ferrar v. London Sewers Comrs.* (1869), L.R. 4 Exch. 227; 11 Digest 184, 211.

(k) 26 Halsbury's Statutes 403.

(l) 2 Halsbury's Statutes 1134.

(m) See article "The L.G.A., 1933—Acquisition of land by agreement subject to restrictive covenants," 80 Sol. Jo. 844—6.

(n) *R. v. Leake (Inhabitants)* (1833), 5 B. & Ad. 469; 26 Digest 290, 225; *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; 11 Digest 121, 142.

authority to perform its statutory duties of repair and maintenance (o), but the authority is neither the owner nor the tenant of the highway. [640]

Part VII. of the L.G.A., 1933 (p), is entitled "Acquisition of, and Dealings in, Land." Dealings in land cover both user and alienation and care must be taken to distinguish the two.

Alienation may be either of the whole interest possessed by a local authority, or of only a part. The former may only take place by sale, in consideration either of one sum or, in the case of land, of a perpetual rent charge (though, since this latter is, if not limited to take effect in remainder after or expectant upon the failure or determination of some other interest, a legal interest, alienation in consideration of such a rent charge would be only a partial alienation). A local authority—at any rate if a municipal corporation—may not make a gift of its property, since this would be a breach of trust.

The latter may take place by lease, by mortgage, or by the grant of an easement, all of which leave the corporation in possession of a lesser interest than it possessed before.

At common law there is no restriction upon the power of a municipal corporation or even of any other local authority to dispose of its property (q). The doctrine of *ultra vires*, the trust imposed upon municipal corporations (r) and statutory prohibitions all limit this power. Apart from statutory prohibitions the general principle is that a local authority may not alienate its property so as to prevent itself from properly discharging its functions. The main statutory power is to sell, with the consent of the M. of H., any land which is not required for the purpose for which it was acquired or is being used (s). The principle to be adduced from this is that it is *ultra vires* to sell land if it is (or, presumably, may in the future be) required for the purpose for which it is acquired or has since been appropriated (t). [641]

Where the Lands Clauses Acts are incorporated with the Act authorising acquisition, sect. 127 of the 1845 Act (u) requires superfluous land to be sold within a certain period, failing which it vests in the owner of the adjoining land. Normally, however, this section is expressly excluded by the special Act. The meaning of the term "superfluous lands" has been very fully discussed in a large number of cases (a). [642]

In selling land there is nothing to prevent a local authority from

(o) *Hertfordshire County Council v. Lea Sand, Ltd.* (1933), 98 J. P. 109; Digest (Supp.). As to other functions, see *Winch v. Thames Conservators* (1872), L. R. 7 C. P. 458; 26 Digest 262, 35; (1874), L. R. 9 C. P. 378; 18 Digest 401, 1233; *Salisbury and Fordingbridge Drainage District Board v. Southern Tanning Co.* (1920), Ltd., [1927] 2 K. B. 566; 41 Digest 51, 376.

(p) 26 Halsbury's Statutes 391.

(q) *R. v. Watson* (1788), 2 Term Rep. 199; 13 Digest 413, 1332; *Colchester Corp'n. v. Lowten* (1813), 1 Ves. & B. 226; 13 Digest 373, 1048; *Evan v. Avon Corp'n.* (1860), 29 Beav. 144; 13 Digest 370, 1021; *Re Kingsbury Collieries, Ltd. and Moore's Contract*, [1907] 2 Ch. 259; 9 Digest 604, 4032, per KEKEWICH, J., at p. 264; *contra*, *A.-G. v. Plymouth Corp'n.* (1845), 9 Beav. 67; 13 Digest 365, 987, where confusion appears to have existed between the meanings of "power" and "duty."

(r) *R. v. Leake (Inhabitants)* (1833), 5 B. & Ad. 469, per PARKE, J., at p. 478; 26 Digest 290, 225.

(s) L.G.A., 1933, ss. 165, 170; 26 Halsbury's Statutes 397, 400.

(t) *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611, per JESSEL, M.R., at p. 623; 11 Digest 121, 139; *Paterson v. St. Andrews Provost* (1881), 6 App. Cas. 883, H. L.; 26 Digest 292, 241.

(u) 2 Halsbury's Statutes 1158.

(a) *E.g. Great Western Rail. Co. v. May* (1874), L. R. 7 H. L. 283; 11 Digest 283, 2121; *Betts v. Great Eastern Rail. Co.* (1879), 49 L. J. (Q. B.) 197; 11 Digest 285, 2128.

imposing restrictive covenants, although, where consent to the sale is necessary, it appears that the consent should cover the terms of the proposed covenants (b). [643]

General power to let land is also given by the L.G.A., 1933 (c), to local authorities other than parish councils. Special powers are given to parish councils (d), and, in relation to corporate land, to municipal corporations (e). [644]

Alienation by way of mortgage has already been referred to in considering the effect of the doctrine upon the borrowing powers of local authorities. Only two powers exist, *i.e.* that of a municipal corporation to mortgage corporate land (f), and that of a local authority to borrow for public health purposes on the security of sewage disposal works (g). The latter power seems to be an exception from the general rule that a local authority cannot, by alienation, incapacitate itself from the discharge of its functions. [645]

The position relating to the grant of easements is obscure. Whatever powers do exist, an easement cannot be granted by or acquired against a local authority if it would prevent the due discharge of the authority's functions. As the definition of land in the L.G.A., 1933 (f), includes any easement in, to or over land, the powers conferred by that Act (ff) to dispose of land would include the grant of an easement. [646]

Torts and the Doctrine of Ultra Vires.—A corporation *per se* has no mind, and is thus incapable of intending to commit any act. It must always act through an agent, and it becomes necessary to attribute to the corporation the state of mind of the agent.

Since no corporation is formed for the purpose of committing wrong, it may be said that, strictly speaking, all torts are *ultra vires*. This theory is untenable in practice as its effect would be to annul all corporate liability in tort. If an *ultra vires* act is to be regarded as something which has in fact not taken place (and this view is borne out by the endeavours of the courts to re-establish persons affected by the commission of such an act in their original circumstances exactly as if nothing had taken place) there can be no liability.

To induce corporate liability in tort it is necessary to impute to the corporation liability for the tortious acts of its agent and, in consequence, slightly to enlarge the scope of the doctrine as already explained. The rule is that a corporation aggregate is liable for the tortious act of its agent or servant, provided the three following conditions are satisfied :

- (1) The tort is such that an action in respect of it would lie against a private individual.
- (2) The person actually committing the tort is acting on behalf of the corporation (h) in the course of his

(b) *Davis v. Leicester Corpn.*, [1894] 2 Ch. 208 ; 33 Digest 52, 314, in which the position is fully discussed.

(c) S. 164 ; 26 Halsbury's Statutes 397. With the consent of the Minister, for any term ; without consent, for a period not exceeding seven years.

(d) S. 169 ; 26 Halsbury's Statutes 399.

(e) S. 172 ; *ibid.*, 400.

(f) S. 305 ; *ibid.*, 466.

(ff) S. 172 (3) ; *ibid.*, 401.

(g) P.H.A., 1936, s. 310 ; 29 Halsbury's Statutes 519.

(h) To impute liability, the person committing the tort must be a servant or agent of the corporation, so that where functions are given by the legislature directly to certain officers who are not, in that respect, agents of the corporation, the cor.

employment (*i*). Whether or not the tort is committed in the course of the agent's employment is a question to be decided in accordance with the general principles of the law of agency and has no proper application to the doctrine as has "within the general scope of his authority" (referred to in the third condition) (*h*).

- (3) The person actually committing the tort is acting on the corporation's behalf within the general scope of his authority. [647]

The words "within the general scope of his authority" form the whole basis of corporate liability in tort. The point seems to be that if the corporation authorises, expressly or by implication, its agent to do an act which is *intra vires* the authority, in the doing of which he commits a tort, the corporation will be liable. On the other hand, if the act authorised by the corporation is one which is *ultra vires* the corporation, then liability cannot be imputed to the corporation if, in the doing of that act, the agent commits a tort (*l*).

The law as interpreted by the courts is a compromise making definition difficult, but the judgment of BRAMWELL, J., in *Brownlow v. Metropolitan Board of Works* (*m*) is illuminating :

"Any person injured by the thing being done has a right to complain of it, and though in one sense unlawful it is still a thing done *within the general scope of the authority* of the board. The common illustration which strikes one is the liability of a master for the negligent driving of his servant. As between him and his servant the master may say 'I did not authorise you to drive negligently,' in one sense, therefore, the servant had been negligent without his master's authority. But as against a party injured by the servant's negligent driving, the servant was acting *within the general scope of his authority*." [648]

The position in regard to acts which would be *ultra vires* even if not tortious is more difficult. In *Mill v. Hawker* (*n*) the position was fully discussed and in the Court of Exchequer the principle as already stated was apparently laid down by a majority of the court, though this point was not dealt with by the Exchequer Chamber on appeal. In a later case (*o*), AVORY, J., took a different view and held the corporation liable even though the act, if not tortious, was clearly *ultra vires*, but in spite of this it is felt that the principle enunciated is correct.

There is a qualification to the principle as stated, in that if in committing the tortious act the agent thinks, and upon the facts as he knows them thinks rightly, that the act is *ultra vires*, and the act,

poration cannot be liable : *Fisher v. Oldham Corpn.*, [1930] 2 K. B. 364 ; Digest (Supp.).

(*i*) See the judgment of WILLES, J., in *Barwick v. English Joint Stock Bank* (1867), L. R. 2 Exch. 259 ; 1 Digest 587, 2245.

(*k*) *Limpus v. London General Omnibus Co.* (1862), 1 H. & C. 526 ; 1 Digest 595, 2236.

(*l*) *Poulton v. London & South Western Rail. Co.* (1867), L. R. 2 Q. B. 534 ; 13 Digest 398, 1217 ; *Ormiston v. Great Western Rail. Co.*, [1917] 1 K. B. 598 ; 32 Digest 48, 554.

(*m*) (1863), 13 C. B. (N. S.) 768 ; (1864), 16 C. B. (N. S.) 546 ; 36 Digest 109, 727. See also *Green v. London General Omnibus Co.* (1859), 7 C. B. (N. S.) 290 ; 13 Digest 403, 1253, and *Smith v. Martin and Kingston-upon-Hull Corpn.*, [1911] 2 K. B. 775 ; 34 Digest 40, 163.

(*n*) (1874), L. R. 9 Exch. 309 ; 34 Digest 186, 1552 ; (1875), L. R. 10 Exch. 92 ; 13 Digest 419, 1393.

(*o*) *Campbell v. Paddington Corpn.*, [1911] 1 K. B. 869 ; 26 Digest 429, 1483.

though in fact *ultra vires*, is in the ordinary course of business, liability will attach to the corporation (*p*). It has also been suggested that in addition to deciding that the tort was committed "within the scope of authority," it must be proved that the matter complained of was within the ordinary course of business of the corporation. The authority quoted for this proposition (*q*), is, however, extremely difficult to follow.

In certain circumstances a local authority may be protected by statute from liability in tort (*r*), but such protection will require the clearest enactment (*s*), and a local authority must, in the exercise of its powers, take all reasonable precautions to avoid causing injury to anyone (*t*). [649]

Application of the Doctrine to Bye-Laws.—The application of the doctrine of *ultra vires* to the bye-law-making powers of local authorities is one of the most interesting of all the applications of the doctrine.

A bye-law is a form of delegated legislation, having a local and particular, rather than a general, application. RUSSELL, C.J., defined the term as follows (*u*) :

"An ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the bye-law, they would be free to do or not do as they pleased. Further, it involves this consequence—that, if validly made it has the force of law within the sphere of its legitimate operation."

If valid, a bye-law is as valid as, and has the force of, an Act of Parliament (*a*). The distinction between a bye-law and a statute rests in that the validity of a bye-law may be questioned by the judiciary, whilst a statute, once passed, cannot be so questioned. [650]

A valid bye-law possesses four characteristics :

- (1) It must be made in accordance with statutory authority, that is, must be made :
 - (a) by an authority possessing the power of making bye-laws ;
 - (b) for a purpose for which the particular power is available ;
 - (c) applicable to those persons who are subject to the bye-law-making power of the authority ;
 - (d) in the manner and form prescribed by the statute granting the power under which the bye-law is made.

(*p*) *Goff v. Great Northern Rail. Co.* (1861), 3 E. & E. 672 ; 13 Digest 404, 1261. This case should be distinguished from *Poulton v. London & South Western Rail. Co.*, *supra*, but cannot be fully reconciled with *Bayley v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1873), L. R. 8 C. P. 148 ; 8 Digest 113, 765.

(*q*) *Edwards v. London and North Western Rail. Co.* (1870), L. R. 5 C. P. 445 ; 34 Digest 136, 1055.

(*r*) *Hammersmith and City Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171 ; 13 Digest 402, 1243 ; *Southwark and Vauxhall Water Co. v. Wandsworth Board of Works*, [1898] 2 Ch. 603, C. A. ; 38 Digest 32, 178.

(*s*) *Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193, *per Lord Watson*, at p. 212 ; 13 Digest 401, 1230 ; *London and Brighton Rail. Co. v. Truman* (1885), 11 App. Cas. 45 ; 38 Digest 48, 282 ; *Edgington and Others v. Swindon Corp.* (1938), 102 J. P. 473 ; Digest (Supp.).

(*t*) *Manchester Corp. v. Farnworth*, [1930] A. C. 171 ; Digest (Supp.).

(*u*) *Kruse v. Johnson*, [1898] 2 Q. B. 91 ; 18 Digest 326, 631.

(*a*) *City of London v. Wood* (1701), 12 Mod. Rep. 669 ; 13 Digest 325, 604.

- (2) It must be certain in its terms, so as to make clear its effect to all persons whom it affects.
- (3) It must not be repugnant to the general law.
- (4) It must be reasonable. [651]

It can be said that in a strictly correct sense, a bye-law lacking in any one or more of the four characteristics will be *ultra vires*, for it is just as much "beyond the powers" of a local authority to make, for example, an unreasonable bye-law as it is to make one for which statutory authority is not available. However, there may be admitted to be practical convenience in (what the author regards as the less logical, but common, course of treating the first characteristic alone as related to the doctrine of *ultra vires*, though the absence of any of the other three will also render a bye-law void. Actually, the courts have found difficulty in distinguishing between the four characteristics, and especially between the first and the last (*b*), although the real distinction is that it is a point of law whether the first is lacking, but the question as to whether a bye-law is reasonable or not is, in the author's opinion, not one of law, but of fact (*bb*).

It will be most convenient to consider each characteristic in turn. Dealing with the first, the statutory powers of a local authority to make bye-laws may be either general (*c*) or specific (*d*). The general powers available to a county or borough council (*c*) are so wide that it may be difficult to suggest a bye-law that could not by some means be brought within their scope, but in practice they are used much less than the specific powers. The decisions on specific powers cover such a variety of subjects, and turn so frequently on the exact words of an enactment, that it is not practicable to set out any ordered principle and they can, therefore, only afford some sort of a guide in considering any particular bye-law (*e*). It has, however, been said that where a bye-law has been made by a body having power to make bye-laws and has been duly confirmed it must *prima facie* be assumed to be valid "unless there is on the face of its actual terms anything which would show that it travels beyond the powers given by the Act or is repugnant to the general law in the sense that it goes beyond the powers conferred by the Act (*f*)."¹ Furthermore,

(b) See *Rudland v. Sunderland Corpn.* (1884), 49 J. P. 359, D. C.; 26 Digest 554, 2494, in which all the characteristics except the second are invoked.

(bb) See *Friend v. Brehout*, *infra*, in which a similar view is expressed by BRAY, J.

(c) The L.G.A., 1933, s. 249; 26 Halsbury's Statutes 249, empowers county and borough councils to make bye-laws for the good rule and government of the county or borough and for the suppression of nuisances therein. The scope of such bye-laws was discussed in *Burnett v. Berry*, [1896] 1 Q. B. 641; 25 Digest 435, 326, and *Thomas v. Sutters*, [1900] 1 Ch. 10; 25 Digest 435, 327. See also *Johnson v. Croydon Corpn.* (1886), 16 Q. B. D. 708; 38 Digest 159, 63.

(d) Specific powers are extremely numerous and cover a wide variety of subjects. They are to be found both in public general and local Acts.

(e) Amongst the more important decisions are *Everett v. Grapes* (1861), 25 J. P. 644; 2 Digest 250, 330 (keeping of pigs); *Waite v. Garston Local Board* (1867), L. R. 3 Q. B. 5; 38 Digest 195, 315 (secondary means of access—see now P.H.A., 1936, ss. 55, 61); 29 Halsbury's Statutes 366, 372; *Wanstead Local Board v. Wooster* (1873), 37 J. P. 403; 38 J. P. 21; 2 Digest 250, 332 (keeping of pigs); *Heap v. Burnley Union Sanitary Authority* (1884), 12 Q. B. D. 617; 2 Digest 251, 332 (keeping of pigs); *Geniel v. Rapps*, [1902] 1 K. B. 160; 13 Digest 328, 653 (use of obscene language in public vehicles); *Wandsworth Corpn. v. Baines*, [1906] 1 K. B. 470; 38 Digest 235, 651 (collection of house refuse); *Tarrant v. Woking U.D.C.*, [1914] 3 K. B. 796; 26 Digest 555, 2503 (new streets); *Friend v. Brehout* (1914), 79 J. P. 25; 25 Digest 55, 435 (prohibition of trawling); and *Thames Conservators v. Kent*, [1918] 2 K. B. 272; 44 Digest 114, 914 (use of towpath). Though not referring to a bye-law *Rossi v. Edinburgh Corpn.*, [1905] A. C. 21, is of considerable interest.

(f) *Onions v. Clarke* (1917), 81 J. P. 77; 13 Digest 328, 646, *per* READING, C.J.

regard must be had in testing the validity of a bye-law to the intention of the enactment by which the bye-law was authorised (g). [652]

In considering the application of bye-laws it may be noted that not only persons within the local authority's area may be subject to them but others as well; for example, a person outside the area of an authority may commit a breach of the authority's building bye-laws by causing a building to be erected within the area, and that although he may never have entered the area. The bye-law, in fact, applies not to persons within the area of the authority, but to the acts of a person, wherever he may be, committed within that area.

Before the coming into force of the L.G.A., 1933 (h), there were two principal codes of procedure for making bye-laws, but these are now assimilated (i). Compliance with this procedure is normally essential to the validity of the bye-laws; they must be made under the common seal of the authority (in the case of a parish council, under the hands and seals of two members), and require the confirmation of the confirming authority (k). Before submission for confirmation they must be advertised and deposited for public inspection. Failure to submit a bye-law for confirmation will make it unenforceable, and it is now expressly provided that the validity of a bye-law is not to be questioned on the ground that it has been confirmed by the wrong authority (l). Though a bye-law requiring confirmation is of no effect until confirmed by the proper authority, confirmation is of itself in no way conclusive of the validity of a bye-law, which may yet be *ultra vires* in any of the ways stated (m). [653]

The second characteristic relates to certainty of terms. To have this characteristic the bye-law must contain adequate information as to the duties of those persons who are to obey it.

It was held in 1859 that a bye-law was valid which left to the discretion of the local authority the selection of stands for vehicles, the "fixing" of such stands being the statutory purpose of the bye-law (n). This decision was, however, anterior to the modern legislation (nn) designed to inform

(g) *Edmonds v. Watermen and Lightermen Co.* (1855), 24 L. J. (M. C.) 124; 13 Digest 329, 664; *Smith v. Great Yarmouth Port and Haven Comrs.* (1919), 83 J. P. 193; 41 Digest 960, 8542.

(h) On June 1, 1934. See s. 308; 26 Halsbury's Statutes 470.

(i) L.G.A., 1933, s. 250; 26 Halsbury's Statutes 440.

(k) As defined in L.G.A., 1933, s. 250 (10); 26 Halsbury's Statutes 441. The power to allow or disallow bye-laws need not be exercised judicially and is not, for instance, confined to the disallowance of bye-laws apparently *ultra vires*.

(l) L.G.A., 1933, s. 249 (3); 26 Halsbury's Statutes 440. See also *Wallasey Tramway Co. v. Wallasey Local Board* (1883), 47 J. P. Jo. 821, D. C., and the P.H. (Confirmation of Byelaws) Act, 1884; 13 Halsbury's Statutes 801.

(m) See *Ipswich Tailors' Case* (1614), 11 Co. Rep. 53a; 13 Digest 291, 222; *Stationers' Co. v. Salisbury* (1693), Comb. 221.

(n) *Blackpool Board of Health v. Bennett* (1859), 4 H. & N. 127; 38 Digest 163, 90. The case of *Slee v. Meadows* (1911), 75 J. P. 246; 38 Digest 161, 77, may be compared, although it differed in that the maximum extent of the prohibition was fixed by the bye-law, so that persons who inspected the bye-law before it took effect knew the most that could be required under it. In the Scottish case of *Robert Baird, Ltd. v. Glasgow Corpn.* (1936), 154 L. T. 65; Digest (Supp.), the arguments and speeches in the House of Lords made much play of *ultra vires*, but in substance the point was the same as in *Twickenham Corpn. v. Solosigns, Ltd.*, [1939] 3 All E. R. 246; 103 J. P. 263; Digest (Supp.), and it may be suggested that *vires* of the Corporations which had made the bye-laws (upheld in both cases) were not so much in issue as was reasonableness in fact. For fuller treatment of this topic, see the preliminary note to Part XII. of the L.G.A., 1933, in Lumley's Public Health (11th ed.).

(nn) P.H. Act, 1875, s. 184 (13 Halsbury's Statutes 705); L.G.A., 1933, s. 250 (26 Halsbury's Statutes 441).

persons affected by a bye-law of its purport, and the view taken since 1875 by the Local Government Board, and since 1919 by the M. of H. is against the legitimacy of such bye-laws.

A bye-law prohibiting persons from wilfully annoying passengers in the streets has been held to be *ultra vires* on the ground of uncertainty (*o*) and in fact the danger of uncertainty is greater in the case of bye-laws made under general than under specific powers (*p*).

Not only must the duties required by a bye-law be clearly indicated but the penalty attached to a breach must be certain (*q*). [654]

Where there is an element of ambiguity, *i.e.* where it is possible to construe a bye-law in two ways, one of which would make the bye-law good and the other invalid, the construction that will make it good will prevail (*r*).

So early as the sixteenth century it was decided that all bye-laws which are contrary to the laws of the realm are void and of no effect (*s*). It follows from the fact that a bye-law is a form of local legislation that it cannot be contrary to general legislation. The principle was formerly given statutory expression (*t*), but, being an unnecessary re-statement of common law principle, this was not re-enacted in the L.G.A., 1933.

The principle was well stated by CHANNELL, J. (*u*) :

"A bye-law is not repugnant to the general law, merely because it states a new offence, and says that something shall be unlawful which the general law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful. It is repugnant if against the general law of the land. . . . Again, a bye-law is repugnant if it adds something inconsistent with the provisions of a statute creating the same offence; but if it adds something not inconsistent, that is not sufficient to make the bye-law bad as repugnant (*a*)."

At the same time, a bye-law cannot be wholly consistent with the common law, since it must create offences unknown to the common law. "A bye-law must necessarily super-add something to the common law otherwise it would be idle (*b*)."

And if the bye-law-making power is given by a local Act, which itself varies the general law, bye-laws made under the Act will, if *intra vires* the Act, be valid even if they

(*o*) *Nash v. Finlay* (1901), 66 J. P. 183; 38 Digest 163, 89.

(*p*) See, for example, *Scott v. Pilliner*, [1904] 2 K. B. 855; 25 Digest 436, 333.

(*q*) *Wood v. Searl* (1618), J. Bridg. 139; 13 Digest 336, 745, though the fixing of a maximum penalty with a power of mitigation is valid: *Piper v. Chappell* (1845), 14 M. & W. 624; 13 Digest 337, 766. The P.H. Act, 1875, s. 183 (13 Halsbury's Statutes 705), required that a bye-law fixing a penalty must give express power to mitigate, but the requirement is not reproduced in the L.G.A., 1933, s. 251 (26 Halsbury's Statutes 442). There is general power to mitigate fines imposed by justices under the Summary Jurisdiction Acts.

(*r*) *Collman v. Mills* (1897), 1 Q. B. 396; 14 Digest 44, 123.

(*s*) *London's Chamberlain Case* (1590), 5 Co. Rep. 62b; 38 Digest 162, 81, followed in *Nevesley v. Webster* (1755), Say. 251; 13 Digest 328, 650. Not even the King can authorise the making of a bye-law contrary to the law of the realm: *per* HOBART, C.J., in *Norris v. Staples* (1616), Hob. 210; 13 Digest 327, 634.

(*t*) P.H.A., 1875, s. 182 (repealed).

(*u*) *Genet v. Rapps*, [1902] 1 K. B. 160; 13 Digest 328, 653.

(*a*) Cases in which the third characteristic is discussed include: *Dearden v. Townsend* (1865), L. R. 1 Q. B. 10; 8 Digest 111, 748; *Bentham v. Hoyle* (1878), 3 Q. B. D. 289; 8 Digest 111, 750; *London, Brighton & South Coast Rail. Co. v. Watson* (1878), 3 C. P. D. 429; 4 C. P. D. 118; 8 Digest 111, 749; *London Passenger Transport Board v. Sumner* (1935), 99 J. P. 387; Digest (Supp.); and *London, Midland & Scottish Rail. Co. v. Grewer* (1936), 155 L. T. 535; Digest (Supp.).

(*b*) *Per* MARTIN, B., in *R. v. Saddlers Co.* (1860), 2 F. & F. 249.

purport to add something to the general law, for it is then the Act, and not the bye-law, which has added something to the general law (c). [655]

The penalty imposed by statute for a certain offence may not be increased by bye-law (d), though in certain circumstances a bye-law may be made more stringent in terms than the statute, or the general law, and yet not be repugnant to it (e).

Bye-laws held invalid as being in restraint of trade have generally been termed unreasonable, but if in complete restraint of trade there is much ground for saying they are repugnant to the general law (f).

To determine whether or not a bye-law is reasonable is often difficult, because what is or is not reasonable is a matter for argument, and opinions often differ. It is not possible adequately to lay down general principles from the multitude of cases on the subject, but in *Kruse v. Johnson* (g) the whole situation as it then existed was reviewed. The judgment of Lord RUSSELL, unfortunately too long to quote in full, admirably sets out the law (h).

A bye-law is not necessarily unreasonable because it might inflict hardship in a particular case. "The principle established by *Kruse v. Johnson* (g) is that one is not to look into a bye-law and say: 'Well, within these general words I can suggest a case which would be perfect nonsense, and therefore the whole bye-law is bad.' " (i). On the other hand, in *Repton School (Governors) v. Repton R.D.C.* (k), PICKFORD, L.J.,

(c) *Onions v. Clarke* (1917), 81 J. P. 77; 13 Digest 328, 646.

(d) *Calder and Hebble Navigation Co. v. Pilling* (1845), 14 M. & W. 76.

(e) *Strickland v. Hayes*, [1896] 1 Q. B. 290; 38 Digest 164, 97, explained in *Thomas v. Sutters*, [1900] 1 Ch. 10; 25 Digest 435, 327.

(f) See Municipal Corporations Act, 1882, s. 247; 10 Halsbury's Statutes 655; *Nicholls v. Tavistock U.D.C.*, [1923] 2 Ch. 18; 33 Digest 529, 60. See also the judgment of Lord HALSBURY in *Scott v. Glasgow Corpn.*, [1899] A. C. 470; 33 Digest 538, 146.

(g) [1898] 2 Q. B. 91; 13 Digest 326, 631.

(h) See also the explanation of this decision in *White v. Morley*, [1899] 2 Q. B. 34; 13 Digest 328, 652. Amongst other cases on the subject are: *R. v. Ashwell* (1810), 12 East, 22; 13 Digest 338, 770; *Hall v. Nixon* (1875), L. R. 10 Q. B. 152; 38 Digest 166, 320; *Gray v. Sylvester* (1897), 61 J. P. 807; 38 Digest 165, 105; *Southend-on-Sea Corpn. v. Davis* (1900), 16 T. L. R. 167, D. C.; *Parker v. Bournemouth Corpn.* (1902), 66 J. P. 440; 38 Digest 165, 107; *Salt v. Scott Hall*, [1903] 2 K. B. 245; 38 Digest 196, 327; *Nokes v. Islington Borough Council* (Nos. 1 and 2), [1904] 1 K. B. 610, 615; 38 Digest 164, 100; *Williams v. Weston-super-Mare U.D.C.* (No. 1) (1907), 72 J. P. 54; 38 Digest 160, 75; No. 2 (1910), 74 J. P. 370; 30 Digest 148, 226; *Leyton U.D.C. v. Chew*, [1907] 2 K. B. 283; 26 Digest 555, 2505; *De Prato v. Partick (Provost)*, [1907] S. C. (H. L.) 5; *Moorman v. Tordoff* (1908), 72 J. P. 142; 38 Digest 160, 72; *Arldge v. Islington Corpn.*, [1909] 2 K. B. 127; 38 Digest 164, 101; *Collins v. Greenwood* (1910), 74 J. P. 137; 38 Digest 186, 252; *L.C.C. v. Bermondsey Bioscope Co., Ltd.*, [1911] 1 K. B. 445; 42 Digest 921, 164 (relating to a licence); *Mitcham Common Conservators v. Cox*, [1911] 2 K. B. 854; 11 Digest 88, 1078; *Tarrant v. Woking U.D.C.*, [1914] 3 K. B. 796; 26 Digest 555, 2503; *Harris v. Harrison* (1914), 78 J. P. 398; 11 Digest 89, 1080; *R. v. Broad*, [1915] A. C. 1110; *Repton School (Governors) v. Repton R.D.C.*, [1918] 2 K. B. 133; 38 Digest 196, 324; *Dodd v. Verner* (1922), 86 J. P. 130; 38 Digest 161, 80; *A.-G. v. Hodgson*, [1922] 2 Ch. 429; 36 Digest 250, 30, and Digest (Supp.); *Roberts v. Williams* (1922), 86 J. P. 153; 19 Digest 571, 112; *A.-G. v. Denby*, [1925] Ch. 596; 38 Digest 186, 333; *Everton v. Walker* (1927), 91 J. P. 125; 44 Digest 101, 805; *Lawrence v. Martin*, [1928] 2 K. B. 454; Digest (Supp.); and *Twickenham Corpn. v. Solosigns, Ltd.* (1939), 103 J. P. 263; Digest (Supp.).

(i) *Per CHANNELL, J.*, in *Williams v. Weston-super-Mare U.D.C.* (No. 1) (1910), 74 J. P. 52, at p. 56; 38 Digest 160, 226.

(k) [1918] 2 K. B. 133; 38 Digest 163, 324.

in the Court of Appeal quoted with approval the remarks of BAILHACHE, J., in the lower court :

" If the effect in a given case, which might be of frequent occurrence, of construing a bye-law in a particular way would lead to a result quite unnecessary for the protection of the public health, and would impose a serious restriction upon the ordinary rights of a property owner with no good object, I think one would be entitled to say that the bye-law was void because it was unreasonable." [656]

Where a part of a bye-law is invalid it may be valid as to the remainder if it is possible to divide it into separate and distinct parts (*l*) ; but if it is indivisible the whole must be void (*m*).

Since a bye-law is made under statutory power and is a form of delegated legislation, a local authority has no power of waiver or relaxation (*n*), unless the bye-laws themselves confer such a discretion (*o*). However, not even the presence of a discretionary power will validate a bye-law otherwise invalid (*p*), but a bye-law is not unreasonable merely because it fails to provide for a dispensation in exceptional cases (*q*). The P.H.A., 1936 (*r*), has now, however, in relation to building bye-laws and bye-laws for preventing waste of water, empowered a local authority, with the consent of the Minister of Health, to relax the requirements of bye-laws or to dispense with compliance with them, if it is considered in any particular case that their operation would be unreasonable.

Since bye-laws which are unreasonable are invalid and, as above stated, cannot be validated by the presence of a discretionary power, the word " unreasonable " in the section probably does not mean that a bye-law which it is found necessary to relax in a particular case is invalid for that reason, though the need for frequent resort to the section might lead to its being so held (*rr*). [657]

Results of the Application of the Doctrine.—It once appeared that an *ultra vires* act was at first voidable, and was valid until actually avoided by the objection of the corporators (*s*). This view led to some confusion until it was finally exploded by *Ashbury Rail. Carriage and Iron Co. v. Riche* (*t*). While it is always possible that every corporator who would otherwise be entitled to object to the *ultra vires* act may be estopped from so doing by having acquiesced in it, it must be remembered that the *persona* of the corporation is a thing apart from its members, so that so soon as it comes to include a person not so estopped he may at once object and commence proceedings to determine the validity of the act.

(*l*) *Strickland v. Hayes*, [1896] 1 Q. B. 290 ; 38 Digest 164, 97.

(*m*) *Elwood v. Bullock* (1844), 6 Q. B. 383 ; 13 Digest 328, 645.

(*n*) *Baxter v. Bedford Corpn.* (1885), 1 T. L. R. 424 ; 38 Digest 166, 119 ; *Yabicom v. King*, [1899] 1 Q. B. 444 ; 38 Digest 190, 286.

(*o*) Such a power, if it purported to be included in a bye-law, might be found to render it void for uncertainty ; see note (*n*), *ante*, p. 281.

(*p*) *Waite v. Garston Local Board* (1867), L. R. 3 Q. B. 5 ; 38 Digest 195, 315.

(*q*) *Salt v. Scott Hall*, [1903] 2 K. B. 245 ; 38 Digest 196, 327.

(*r*) Ss. 63 and 132 ; 29 Halsbury's Statutes 374, 420. For a full explanation of this in relation to the previous law, see the notes on these sections in Lumley's Public Health (11th ed.).

(*rr*) For a discussion of this point, see paragraph 52 of the Report (col. 9213) of the Departmental Committee on Building Byelaws, 1918.

(*s*) *Taylor v. Chichester and Midhurst Rail. Co.* (1867), L. R. 2 Exch. 356 ; reversed (1870), L. R. 4 H. L. 628 ; 18 Digest 356, 929.

(*t*) (1875), L. R. 7 H. L. 653 ; 18 Digest 354, 922.

By the last-mentioned case it was held that if an act is *ultra vires*, it is void from its inception and, therefore, incapable of ratification even by the unanimous resolution of the corporators. A contract *ultra vires* a corporation cannot be enforced against that corporation, for it is void *ab initio* and of no effect (*u*). It does not matter in the least that great hardship, either to the corporation, the public, or an individual, is involved by the declaration that the contract is a nullity; it cannot in any way obtain a new lease of life. The only way in which equity will act on behalf of a thus injured party is to endeavour to restore, where possible, the parties to their original status and condition, so that a corporation might, for example, have to account for benefit received before the declaration of nullity. [658]

In *Sinclair v. Brougham* (*a*), Lord HALDANE said :

"In the jurisprudence of England the doctrine of *ultra vires* must now be treated as established in a stringent form by Acts of the Legislature and decisions of great authority which have interpreted these Acts. This is a principle which it appears to me must to-day be taken as a governing one, not only at law but in equity. I think it excludes from the law of England any claim *in personam* based even on the circumstance that the defendant has been improperly enriched at the expense of the plaintiff by a transaction which is *ultra vires*."

There is, however, a right to follow money into the hands of one who has obtained it in pursuance of an *ultra vires* agreement, as in the case of a breach of trust (*b*), and the rule does not, of course, apply to avoid corporate liability in tort. [659]

There is a possible exception to the general rule but, since it is based upon a privy council decision, it is not necessarily binding upon the English courts. Carrying, as it does, the weight of much and worthy general opinion, every consideration ought, however, to be given to it. From this case (*c*) there is some authority for supposing that, although a proposed purchase is *ultra vires* and may be restrained for that reason, if a conveyance is duly executed the transfer is complete and the property duly vested in and a good title obtained by the local authority.

Every person is presumed to know the nature and extent of a local authority's powers (*d*), so that where the exercise of a power is conditional upon, for example, the obtaining of Ministerial consent, the person concerned must see that the condition has been fulfilled (*e*). This does not apply, however, to the internal rules, *e.g.* standing orders, of a local authority (*f*). [660]

Where a contemplated act appears to be *ultra vires* a local authority,

(*u*) A contract *ultra vires* cannot be made binding upon a corporation even if the corporation purports to consent to judgment upon it : *Great North-West Central Rail. Co. v. Charlebois*, [1899] A. C. 114 ; 9 Digest 632, 4185.

(*a*) [1914] A. C. 398, 414 ; 12 Digest 282, 2317.

(*b*) See the judgment of Lord PARKER in *Sinclair v. Brougham*, *ante*, p. 267.

(*c*) *Ayers v. South Australian Banking Co.* (1871), L. R. 3 P. C. 548 ; 3 Digest 280, *p* ; *cf. Batson v. London School Board* (1903), 67 J. P. 457 ; 19 Digest 573, 120 ; *subsequent proceedings* (1904), 69 J. P. 9.

(*d*) *Macgregor v. Dover & Deal Rail. Co.* (1852), 18 Q. B. 618 ; 10 Digest 1169, 3302. But see note (*p*), *ante*, p. 266.

(*e*) *Pacific Coast Coal Mines, Ltd. v. Arbuthnot*, [1917] A. C. 607 ; 9 Digest 616, 4095, P. C.

(*f*) *Royal British Bank v. Turquand* (1856), 6 E. & B. 327 ; 13 Digest 368, 1006 ; L.G.A., 1933, s. 266 ; 26 Halsbury's Statutes 447 (the provisions of which as to standing orders are directory and not mandatory).

an action may be commenced to restrain the local authority from committing it (*g*). The action must be brought in the name of the Attorney-General, on the relation of the person wishing to restrain the local authority (*h*), unless the person concerned is specially affected by the commission of the proposed act, when he may bring it in his own name (*i*). [661]

It is even possible to restrain the M. of H. from giving consent, for example, to a purchase which would be *ultra vires* (*k*).

As to the powers and duties of the district auditor, where the accounts of a local authority are subject to district audit (*l*), see sect. 228 of the L.G.A., 1933 (*m*). [662]

London.—See L.C.C. (General Powers) Act, 1939, sect. 73 (travelling, etc., expenses of members and committees of county council); 32 Halsbury's Statutes 496. See London Government Act, 1939, ss. 97—114 (acquisition of, and dealings in, land); 32 Halsbury's Statutes 305—312; sects. 124—145 (purposes for which, and mode in which, money may be borrowed and security for borrowing); *ibid.*, 317—319; Part IX. (promotion of, and opposition to, bills); *ibid.*, 330—332; sect. 160 (contracts of local authorities); *ibid.*, 333; sect. 163 (travelling expenses of members and committees of borough councils); *ibid.*, 334; sect. 164 (acceptance of gifts of property); *ibid.*, 334; sect. 190 (publicity for amenities); *ibid.*, 345; sect. 191 (expenses in connection with ceremonies); *ibid.*, 346.

(*g*) Cases where this procedure has been adopted are numerous and have been quoted throughout.

(*h*) *Stockport District Waterworks Co. v. Manchester Corpn.* (1862), 9 Jur. (N. S.) 266; 13 Digest 351, 889.

(*i*) *Prestney v. Colchester Corpn. and A.-G.* (1882), 21 Ch. D. 111; 33 Digest 98, 630.

(*k*) *R. v. Minister of Health, Ex parte Villiers* (1936), 100 J. P. 212; Digest (Supp.).

(*l*) L.G.A., 1933, s. 219; 26 Halsbury's Statutes 424.

(*m*) As to the meaning of "misconduct" in s. 228 (1); 26 Halsbury's Statutes 429, see *Davies v. Cowperthwaite* (1938), 102 J. P. 405; Digest (Supp.).

UNCLASSIFIED ROADS

See ROADS CLASSIFICATION.

UNDERGROUND ROOMS

See CELLAR DWELLINGS; INSANITARY HOUSES; SANITARY CONVENIENCES; SLUM CLEARANCE.

UNDER-SHERIFF

See SHERIFFS.

UNEMPLOYMENT

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See also titles :

GENERAL EXCHEQUER GRANTS ;
 MEANS TEST ;
 NATIONAL HEALTH AND UNEMPLOY-
 MENT INSURANCE ;

PUBLIC ASSISTANCE ;
 UNEMPLOYMENT RELIEF WORKS.

Introduction.—While the Poor Relief Act of 1601, following on the social and economic changes of the sixteenth century, first transformed the religious duty of almsgiving into a civil obligation, earlier statutes had already dealt with the problems of the able-bodied poor as apart from the infirm or youthful. There had been a continuous passage throughout the middle ages of statutes dealing with the subject, containing either the most severe penalties or a simple provision for “setting to work,” according to the social and political exigencies of the period. The able-bodied unemployed in such statutes were classed as “vagrants,” “vagabonds,” “sturdy beggars” or “gipsies” (a). The Act of 1601, much of which is still incorporated in the Poor Law Act, 1930 (b), did not contemplate indoor institutional relief; but so far as vagabonds and certain minor offenders were concerned another Act had already, in 1587, empowered the county magistrates to set up houses of correction, later called Bridewells, and the “putting to work” of the able-bodied under the Elizabethan law was done in these institutes. This was, however, found too difficult in the way of administration and in the years which preceded the Poor Law Amendment Act, 1834, it had become very common to relieve the able-bodied, like the infirm, by way of mere outdoor relief.

In the eighteenth century, the policy was to set up both poor houses, intended as a refuge for those of the infirm who were not receiving outdoor relief, and workhouses, following the old Bridewells as residential institutions in which it was intended to set to work the able-bodied unemployed. In practice, however, both categories came to be admitted to one institution and the “general mixed workhouse” was evolved. After the Act of 1834, reasonable administrative economy and convenience, as they presented themselves at that period, compelled each poor law union to be satisfied with one such institution only.

(a) For a description of these Acts, see Introduction to Glen's Public Assistance, 1930, and the Introduction to Glen's Unemployment Assistance, 1934. See also title PUBLIC ASSISTANCE.

(b) Ss. 14 *et seq.* ; 12 Halsbury's Statutes 976.

From 1834 to the beginning of the War in 1914, the tradition persisted that the normal way to deal with an application for relief from an able-bodied man was to offer him indoor relief which he could accept or refuse as he wished, and an order of the Local Government Board existed which hindered, if it did not actually prohibit, the giving of outdoor relief to able-bodied men. During these years, however, the number of men relieved on account of unemployment was very small relatively to those which preceded 1834 or succeeded 1934, though even in the earlier period the prohibition was suspended from time to time, in towns where any unusual industrial difficulty arose, and outdoor relief was given sometimes unconditionally and sometimes conditionally on the performance of a task of work.

The practice was meanwhile growing of putting in hand relief work as described in the introduction to the title UNEMPLOYMENT RELIEF WORKS, and in 1905 the Unemployed Workmen Act was passed. This was followed in 1909 by the Labour Exchanges Act (c) which imposed on the Board of Trade the duty (d) of providing labour exchanges, now employment exchanges, for registering unemployed persons capable of work, and acting as a medium for placing them in suitable situations. By the National Insurance Act of 1911 (e), a statutory scheme of insurance against unemployment was set up, and this, with the many amending Acts, is now incorporated in the Unemployment Insurance Act, 1935 (f).

The great increase in unemployment after the war of 1914-18 led to difficulties in unemployment insurance which have been described in the title MEANS TEST. Insurance benefit should differ from assistance, in that it can be claimed as a matter of right under a contract, whereas the giving of assistance is a matter of grace. The contract must, however, be kept, and the amount given related to the amount contemplated in the contract in order to keep the accounts of the insurance fund actuarially sound. It is thus necessary in regard to assistance, as explained in the title MEANS TEST to make inquiries into the applicant's means and needs, which is not necessary in regard to insurance. The breaking down of these rules in regard to the vast number of unemployed since that war led to the problems of "extended," "uncovenanted" and "transitional" benefit and so to the passing of the Unemployment Assistance Act, 1934 (g).

The function of the Unemployment Assistance Board (h) as set up under that Act (i) was to take over from the insurance authority those able-bodied unemployed who had been, but should not have been, within the Unemployment Insurance Acts, and also large numbers who had not come under those Acts but had been in receipt of public assistance. In regard to the passing over from the public assistance authorities to a Board representing the Central Government, it was recognised that the duty of granting (or, still more, of refusing) assistance was a difficult local function for an elected local councillor, but the dominant reason was financial. It came to be agreed that the financial responsibility

(c) 20 Halsbury's Statutes 650.

(d) Passed over to the Ministry of Labour by the New Ministries and Secretaries Act, 1916; 3 Halsbury's Statutes 413.

(e) (Repealed); 20 Halsbury's Statutes 465.

(f) See p. 289, *post*.

(g) See p. 292, *post*.

(h) Now called the Assistance Board; see Old Age and Widows' Pensions Act, 1940 (8 & 4 Geo. 6, c. 13), s. 10.

(i) S. 35; 27 Halsbury's Statutes 768.

for assisting the unemployed should rest upon the taxpayer and not to any great extent upon the ratepayer, and central administration was therefore a necessity. The financial settlement with the local authorities was agreed between the Government and the local government associations on a temporary formula and thereafter was incorporated in the general exchequer contribution at the review in 1937. [663]

Unemployment Insurance.—The Unemployment Insurance Act, 1935 (*k*), consolidated the law up to that year on unemployment insurance, but it has been added to since by the Unemployment Insurance (Agriculture) Act, 1936 (*l*), and the Unemployment Insurance Acts, 1938 (*m*), 1939 (*n*), and 1940 (*o*). The administration of these Acts does not fall within the duties of the local authorities, but they are connected with it, beyond themselves being employers, as local education authorities in providing courses of instruction for insured young persons, as set out below. The subject of local authorities as employers under the Unemployment Insurance Acts has been dealt with in the title NATIONAL HEALTH AND UNEMPLOYMENT INSURANCE. [664]

Insured Persons.—By sect. 1 of the Act of 1935 (*p*), all persons whether British subjects or not of either sex who have attained the minimum age for entering into insurance and are employed in insurable employment must be insured. The minimum age, by sect. 2 (*q*), is the age, not less than fourteen, attained by a child, where under the law in force at the time, the parents cease to be under an obligation to cause him to attend school. By sect. 15 (2) of the Education Act, 1936 (*r*), a child with an employment certificate is held to have attained the minimum age for entry into insurance even if the certificate ceases to have effect. [665]

By sect. 3 of the Unemployment Insurance Act, 1935 (*q*), insurable employment is as set out in Part I. of Sched. I. of the Act (*s*), subject to certain additions and exemptions. It includes employment in Great Britain under any contract of service or apprenticeship, written or oral, express or implied, also employment on ships and employment in the service of local authorities. Employment in agriculture was excepted, but was added by the Act of 1936 (*t*). Private gardeners were excepted by the latter Act, but added later by order (*u*). Gamekeepers and grooms were added by sect. 2 of the Unemployment Insurance Act, 1938 (*a*). Employments still excepted are domestic service, private nursing, an agent paid by commission or a share of profits, employment other than manual labour at a rate of over £420 (*b*) a year, casual work, except for the purposes of the employer's trade or business or in games or recreation unless a club is the employer, work declared subsidiary by an order of the Minister of Labour (*c*), employment as crew in a fishing vessel and remunerated by a share in the profits, employment in the service of the husband or wife of the employed person, or where the employed person is the child of, or maintained by, the employer

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| (<i>k</i>) 28 Halsbury's Statutes 499. | (<i>l</i>) 29 Halsbury's Statutes 1034. |
| (<i>m</i>) 31 Halsbury's Statutes 807. | (<i>n</i>) 32 Halsbury's Statutes 741. |
| (<i>o</i>) 3 & 4 Geo. 6, c. 44. | (<i>p</i>) 28 Halsbury's Statutes 503. |
| (<i>q</i>) <i>Ibid.</i> , 504. | (<i>r</i>) 29 Halsbury's Statutes 128. |
| (<i>s</i>) 28 Halsbury's Statutes 570. | (<i>t</i>) S. 1; 29 Halsbury's Statutes 1035. |
| (<i>u</i>) <i>Ibid.</i> , 1043; S.R. & O., 1936, No. 1808. | See also S.R. & O., 1936, No. 1153, |
- as to other persons engaged in minor agricultural pursuits.
 (*a*) S. 2 and Schedule; 31 Halsbury's Statutes 808, 812.
 (*b*) Increased from £250 by s. 4 of the Unemployment Insurance Act, 1940 (c. 44), as from September 2, 1940. For details as to ascertaining the rate of remuneration, see s. 12 (2) of the Unemployment Insurance Act, 1939; 32 Halsbury's Statutes 748.
 (*c*) See S.R. & O., 1935, Nos. 1109 and 1359.

and no money wages are paid. Some employments might be exempted if certified by the Minister and regulations were to be made by him if there were likely to be anomalies (*d*). [666]

By sect. 5 and Sched. II. of the Act of 1935 (*e*), persons are excluded while they hold a certificate of the Minister that they have a pension or private income of £26 a year or upwards; that they are ordinarily and mainly dependent upon some other person, or upon earnings from an occupation which is not insurable; or that they are employed in an occupation which is seasonal and does not ordinarily last more than eighteen weeks in the year. Men over sixty-five, women over sixty (*f*) and blind persons in receipt of a pension under the Old Age Pensions Act, 1936 (*g*), also are not insurable. By sects. 4 and 84 of the Act (*h*) question as to whether or not employment is an insurable one is to be determined by the Minister, with an appeal to the High Court. [667]

Contributions.—Contributions are to be made by the employer (who must pay for excluded persons also), the employed person, and the State (*i*). They are to be paid into the Unemployment Fund (*k*). The contributions were set out in Sched. III. of the Act of 1935, and Sched. II. of the Act of 1936, but have since been altered (*l*). The weekly rates of contribution by both the employee and employer are now as follows :

	OTHER EMPLOYMENTS	AGRICULTURE	
		To 6th July, 1942	After 6th July, 1942
	<i>d.</i>	<i>d.</i>	<i>d.</i>
Men 21 and over	10	3½	4
Women 21 and over	9	3	3½
Men 18-21 —	9	3	3½
Women 18-21 —	8	2½	3
Boys 16-18 —	5	2	2
Girls 16-18 —	4½	1½	1½
Boys under 16 —	2	1½	1½
Girls under 16 —	2	1	1

Appeals as to the rate of contributions are to be made to the Minister (*m*). Contributions are to be paid by the employer and the employee's share stopped from the wages of the employee (*n*). [668]

Benefits.—There are four statutory conditions for the receipt of benefit (*o*): (i.) not less than thirty contributions must have been paid in respect of the two preceding years, (ii.) application must be made in the prescribed manner, (iii.) the applicant must be capable of and available for work, unless at an authorised training course, and (iv.) if required to attend an authorised training course he must have done so.

There are several disqualifications (*p*): (i.) loss of employment

(*d*) S. 55; 28 Halsbury's Statutes 530; S.R. & O., 1935, No. 804.

(*e*) 28 Halsbury's Statutes 505, 572.

(*f*) Old Age and Widows' Pension Act, 1940 (c. 13), s. 2.

(*g*) S. 2 (1) (*a*); 29 Halsbury's Statutes 1052, as amended by the Blind Persons Act, 1938, s. 1; 31 Halsbury's Statutes 812.

(*h*) 1935 Act; 28 Halsbury's Statutes 505, 551; and see S.R. & O., 1936, No. 378, and s. 5 (2) of the 1940 Act.

(*i*) Ss. 6, 8, and 21; 28 Halsbury's Statutes 506, 514. See also s. 7 of the Act of 1940 as to State contributions. (*k*) S. 58; *ibid.*, 533.

(*l*) See S.R. & O., 1936, No. 351; S.R. & O., 1938, No. 293, and s. 2 and Sched. II. of the 1940 Act.

(*m*) S. 12; 28 Halsbury's Statutes 509; see S.R. & O., 1936, Nos. 378, 551; 1939, No. 586.

(*n*) S. 10; 28 Halsbury's Statutes 508.

(*o*) Ss. 22-25; *ibid.*, 514-516.

(*p*) Ss. 26-30; *ibid.*, 516-517. See also ss. 1, 2 of Act of 1939, and S.R. & O. 1939, No. 1771.

through a trade dispute, or (ii.) through misconduct or the voluntary leaving of employment without just cause, (iii.) refusing or failing to apply for work, (iv.) being in prison or a workhouse, (v.) being in receipt of sickness or disablement benefit under the National Health Insurance Acts, and (vi.) residence outside Great Britain. Rates of benefit are prescribed by sect. 1 and Sched. I. of the Act of 1940 (*g*). Provision is made as to dependent children by sect. 37 of the 1935 Act (*r*), and by an order in 1940 (*s*) the benefit per week is 4*s.* for each of the first two dependent children and 3*s.* for each other one. By sect. 4 (2) of the Education Act, 1936 (*t*), where a child has had an employment certificate and the employment has ceased and he attends an "alternative" course, this is to be deemed to be full-time instruction for increased benefit. [669]

In 1938 (*u*), benefits were increased as to agriculture and altered as to waiting days (*a*) in regard to all employments. Under the 1940 Act (*b*) the rates of benefit per week are :

	OTHER EMPLOYMENTS		AGRICULTURE	
	<i>s.</i>	<i>d.</i>	<i>s.</i>	<i>d.</i>
Men 21 and over — —	20	0	18	0
Women 21 and over — —	18	0	15	0
Men between 18 and 21 —	16	0	15	0
Women between 18 and 21	14	0	12	0
Boys between 17 and 18 —	9	0	7	6
Girls between 17 and 18 —	7	6	6	0
Boys under 17 — —	6	0	5	0
Girls under 17 — —	5	0	4	0

Increases may in some cases be made on account of adult dependents (*c*). By sect. 27 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1936 (*d*), if the Minister considers that any sums have been paid as benefit for a period subsequent to a date on which an old age pension began to accrue, he may direct the sum to be treated as old age pension and may deduct the sum from any payment to be made on account of old age pension and pay it to the Unemployment Fund.

Claims for benefit are dealt with by insurance officers from whom appeal lies to Courts of Referees and, finally, to the Umpire (*e*). [670]

Administration and Finance.—The financial administration of the Acts is under the control of the Unemployment Insurance Statutory Committee, and the Minister of Labour may refer to them any question as to the Unemployment Fund (*f*). The committee may report to the Minister when changes as to contributions and benefits may be made, and this is then done by order laid before Parliament (*g*). The Treasury may make advances to the Fund (*h*) and may make special schemes

(*g*) 3 & 4 Geo. 6, c. 44.

(*r*) 28 Halsbury's Statutes 521.

(*s*) S.R. & O., 1940, No. 569.

(*t*) 29 Halsbury's Statutes 121.

(*u*) S.R. & O., 1938, Nos. 292, 293.

(*a*) See now 1940 Act, s. 3.

(*b*) Unemployment Insurance Act, 1940, s. 1, and Sched. I.

(*c*) S. 38 of the Act of 1935; 28 Halsbury's Statutes 522; S.R. & O., 1938, No. 294, and for agriculture No. 293. Also s. 4 of the Act of 1939; 32 Halsbury's Statutes 744.

(*d*) 29 Halsbury's Statutes 1220.

(*e*) 1935 Act, ss. 40—44; 28 Halsbury's Statutes 524—526; S.R. & O., 1936, No. 334. See also Control of Employment Act, 1939; 32 Halsbury's Statutes 1160.

(*f*) Ss. 56—58; 28 Halsbury's Statutes 533.

(*g*) S. 59; *ibid.*

(*h*) Ss. 59 (2), 60; *ibid.*, 533, 535; S.R. & O., 1936, Nos. 358, 1153, and Unemployment Insurance Act, 1938, s. 4; 31 Halsbury's Statutes 809.

and arrangements with organisations and associations of insured workers (i).

The Minister has also power to assist schemes for promoting greater regularity of employment (k), and to make arrangements with employers as to the notification at employment exchanges of vacant situations (l). Payment from the Insurance Fund may be made for travelling expenses for employed contributors seeking work (m). [671]

Education Authorities and Unemployed Children.—The Minister of Labour was empowered to set up training courses for persons over eighteen under the Unemployment Insurance Act, 1934 (n), and this was incorporated as sect. 77 (o) in the Unemployment Insurance Act, 1935 (p). In addition, the local education authority was by sect. 13 of the 1934 Act (q) empowered to set up courses of instruction for unemployed young persons from the age of entry into insurance up to 18, and this is incorporated as sect. 76 (r) for those authorities which had not already set them up under the earlier Act; and by sect. 1 of the Unemployment Insurance Act, 1938 (s), meals may be provided as in sects. 82—85 of the Education Act, 1921 (t), and milk and biscuits free of charge, subject to approval of the Minister. The Minister may require the attendance of persons under eighteen at authorised courses (u).

By sect. 79 of the Act of 1935 (a), the Minister may defray or contribute to the cost of travelling to authorised courses, and grants may be made out of the Unemployment Fund towards the cost of them. Sect. 75 (b) provides for the crediting of contribution to persons who continue with whole-time education after the age of entry into insurance.

Local education authorities may make schemes (c) which must be approved by the Minister, for helping persons under eighteen in the choice of suitable employment; and they may co-operate with other authorities to do this. The Minister may make regulations requiring employers to give notice to him when persons under eighteen leave their employment (d). Any sum by which the expenses of local education authorities are increased under these provisions is to be defrayed out of moneys provided by Parliament (e). [672]

(i) 1935 Act, ss. 68—74; 28 Halsbury's Statutes 539—544, and s. 6 of the 1939 Act; 32 Halsbury's Statutes 745. Various S.R. & O. have been made in regard to banks and insurance companies.

(k) S. 100; 28 Halsbury's Statutes 560.

(l) S. 101; *ibid.*, 561.

(m) S. 103; *ibid.*

(n) By the Unemployment Act, 1934, s. 34 (3); 27 Halsbury's Statutes 786, Part I. and Scheds. I., II., III., IV., and V. of that Act may be cited separately as the Unemployment Insurance Act, 1934.

(o) 28 Halsbury's Statutes 547; extended by s. 8 of the 1939 Act; 32 Halsbury's Statutes 746.

(p) 28 Halsbury's Statutes 547.

(q) (Repealed) 27 Halsbury's Statutes 768.

(r) 28 Halsbury's Statutes 546.

(s) 31 Halsbury's Statutes 807.

(t) 7 Halsbury's Statutes 175—176.

(u) 1935 Act, s. 78; 27 Halsbury's Statutes 547; see S.R. & O., 1934, No. 847, made under the corresponding s. 14 of the Act of 1934; 27 Halsbury's Statutes 837.

(a) 28 Halsbury's Statutes 549.

(b) *Ibid.*, 545; see S.R. & O., 1935, No. 841; 1936, No. 1157; and 1937, No. 1221, and Unemployment Insurance (Crediting of Contributions) Act, 1935; 28 Halsbury's Statutes 577. See also s. 7 of the Act of 1939; 32 Halsbury's Statutes 746, and S.R. & O., 1939, No. 924.

(c) S. 81; 28 Halsbury's Statutes 550.

(d) S. 82; *ibid.*, 551. So far none have been made.

(e) S. 83; *ibid.*, 551. S.R. & O., 1936, No. 383.

Unemployment Assistance.—Unemployment assistance is more closely connected with the work of local authorities than unemployment insurance, as has already been pointed out in the introduction to this article. While the aim of the Unemployment Assistance Act, 1934 (*f*), was essentially to take from the public assistance committees the relief of the able-bodied unemployed and their dependants, it is clearly stated in that Act and demonstrated by the experience of its working that there is need of a ready co-operation between the two systems. In their First Annual Report (*g*) issued in 1936, the Unemployment Assistance Board (*h*) refer to the high value they place on the co-operation of the local welfare services. Contacts, they say, had been established by their officers between the applicants for allowance and the local health, housing and education services, especially with regard to medical needs and the feeding of school children. The precise knowledge of the officers of the Board as to the means of its applicants had enabled them to bring cases of over-crowding and bad housing to the notice of the housing authorities. They had also been able to facilitate industrial transference by making special allowances. In their Third Report (*g*) issued in 1938, the need is stressed of research into prolonged cases of unemployment in order to sort out those men and women who have lost interest and are content to remain on unemployment allowances. It is also stated that :

“ It is obviously against good policy that an able-bodied person when out of work and dependent on public funds for support should be as well off as, or indeed better off than, he would be in work.” [678]

The Board and Advisory Committee.—The Unemployment Assistance Board (*h*) was set up by sect. 35 (1) of the Unemployment Act, 1934 (*i*). Its constitution and proceedings are provided for in Sched. VI. (*h*). It is a body corporate, consisting of a chairman, deputy chairman, and not more than four members, of whom at least one must be a woman. No member of the Board can be a member of the House of Commons, and in order that they may be independent of Parliamentary pressure, their salaries are paid out of the consolidated fund and not voted annually. The Minister of Labour is, however, responsible for the direction of the general policy of the Board. The functions of the Board, as set out in sect. 35 (2) (*i*), are the assistance of persons to whom the Act applies who are in need of work ; the promotion of their welfare, and in particular the making of provisions for the improvement and re-establishment of the condition of such persons with a view to their being fit for entry or return to regular employment ; and the granting of allowances in accordance with the provisions of the Act.

In order to obtain advice and assistance from persons with local knowledge, advisory committees (*l*) have been established throughout the country, and the members may be paid such travelling expenses and other allowances, including remuneration for loss of time, as the Board after consultation with the Minister of Labour and the Treasury may determine. In their Second Annual Report (*g*), for the year 1936,

(*f*) By the Unemployment Act, 1934, s. 57 (2) ; 27 Halsbury's Statutes 804, Part II., and Schedules VI., VII., and VIII. of that Act may be cited separately as the Unemployment Assistance Act, 1934.

(*g*) The Board must make an annual report on the operation of the Unemployment Assistance Act, 1934, to the Minister who is required to lay it before Parliament : s. 35 (4) ; 27 Halsbury's Statutes 787.

(*h*) Renamed Assistance Board by Old Age and Widows' Pensions Act, 1940 (c. 13), s. 10 (1).

(*i*) 27 Halsbury's Statutes 786.

(*k*) *Ibid.*, 820.

(*l*) See s. 35 (3) ; 27 Halsbury's Statutes 787.

the Board say that 126 advisory committees have been appointed and that they contain members with experience in the local government administration of public health and public assistance, and with knowledge of industrial conditions from both the employers and work-people's points of view, and of the social services and special requirements of the locality. [674]

Administration and Finance.—The Board has its own staff of officers and servants. They are responsible for the investigation of the circumstances of applicants for unemployment allowances and for the payment of those allowances subject to the regulations. For the purposes of investigation the Board may act through its own officers or, by arrangement, through the officers of the Minister of Labour or of any local authority (*m*). Allowances generally are to be paid at the offices of the Minister of Labour; but they may in special cases be paid at the post office; and, when issued by the local education authority, they may be paid at their offices (*n*). [675]

Appeal tribunals are constituted to determine appeals (*o*), but except in cases of "special difficulty" (*p*) no applicant can appeal without the leave of the chairman of the tribunal. In practice, such leave is very freely given. Each tribunal consists of a chairman appointed by the Minister, and two other members, one from a panel of persons nominated by the Minister to represent work-people and the other appointed by the Board to represent the Board. An appeal from an officer as to whether the applicant is a person to whom the Act applies may, however, be made to the chairman only. Such an appeal may be made by the applicant or by the public assistance authority; and if the question is whether the applicant is disqualified as being normally employed in insurable employment, or as having lost employment through a trade dispute, it must be referred by the chairman to the M. of H. or the insurance officer, as the case may be (*q*).

It is stated in the Second Annual Report that the number of appeals to Appeal Tribunals in 1936 was 14,485 against determination of needs, 24 against determination to which conditions in regard to cases of "special difficulty" were attached, and 522 against decisions that the Act did not apply to the persons in question.

As to finance, a fund, called the Unemployment Assistance Fund, has been established according to regulations made by the Treasury (*r*) out of which all the allowances are paid by the Board (*s*). The Treasury, besides paying the salaries of the Members of the Board and officers, contributes the sums which are considered necessary (*t*). It is stated, in the Second Annual Report, that the approximate expenditure in 1936 was £43,517,000, and, in the Third Annual Report, that in 1937 it was £41,420,000. By sect. 45 (*u*) annual contributions were to be made by county and county boroughs according to formulæ contained in that section, which was repealed and replaced by the Local Government (Financial Provision) Act, 1937 (*x*). By the provisions of this Act the contribution made by the local authorities in respect of public assistance is merged in the general arrangements for the block grant. These include a "weighted population" factor based on the percentage of unemployment in an area. [676]

(*m*) S. 38 (5); 27 Halsbury's Statutes 790.

(*n*) S. 42; *ibid.*, 793.

(*o*) S. 39 (4), (5); Sched. VII.; *ibid.*, 791, 820; S.R. & O., 1939, No. 583.

(*p*) See *post*, p. 295.

(*q*) S. 36; 27 Halsbury's Statutes 788.

(*r*) S. 44; *ibid.*, 794; and S.R. & O., 1935, No. 911.

(*s*) S. 46; *ibid.*, 796.

(*t*) S. 47; *ibid.*, 797.

(*u*) *Ibid.*, 794.

(*x*) 30 Halsbury's Statutes 377.

Persons to be Assisted.—In order to qualify for unemployment assistance, a person must be between the ages of sixteen (*a*) and in the case of a man sixty-five (*b*); in the case of a woman sixty (*c*); his normal occupation must be one in which contributions are payable under the Widows', Orphans' and Old Age Contributory Pensions Acts, or if he has not normally been earning since the age of sixteen, he is a person who might reasonably have expected that his normal occupation would be such employment but for the industrial circumstances of the district in which he resides; and he must be capable of and available for work (*d*). He is not to be held "not capable of and available for work" if attending authorised courses (*e*); and may be deemed to be capable of work notwithstanding such periods of occasional sickness or incapacity, as are specified in rules made by the Minister (*f*). [677]

Allowances.—An allowance is granted to a person under the Act (*g*) if he proves in accordance with rules made under the Act (*i*.) that he is registered for employment and has made application for an allowance in the prescribed manner; (*ii*.) that he has no work or only such part-time or intermittent work as not to enable him to earn sufficient for his needs; and (*iii*.) that he is in need of an allowance. The amount of the allowance is to be determined according to his needs (*h*), including the needs of any members of the household who are dependent on him and do not themselves come under the Act. The needs are not to include medical needs. They must be determined according to regulations which provide that the resources of all members of his household are to be taken into account, and also that there is to be disregarded (*i*.) the first five shillings a week of any sick pay from a Friendly Society, and the first seven shillings and sixpence a week and the maternity benefit under the National Health Insurance Acts; (*ii*.) the first one pound a week of any wound or disability pension; (*iii*.) one-half of any workmen's compensation; (*iv*.) money and investments treated as capital assets up to the value of £25—while between £25 and £300 they are to be treated as equivalent to an income of one shilling a week for each £25—and (*v*.) as to interest in a dwelling-house in which he resides, any sum he might obtain by selling or borrowing money upon the security of such interest.

The regulations lay down the following sums as weekly allowances, subject to adjustments where special circumstances exist (*i*):

Where the applicant is living as a member of a household consisting of two or more.

For the householder and his wife (or her husband)—26s.

For the householder (alone)—17s. for a man and 16s. for a woman.

For other members of the household, if aged 21 or over—11s. for a man and 10s. for a woman.

Between 16 and 21—9s.

Between 8 and 11—4s. 6d.

„ 14 and 16—6s. 6d.

„ 5 and 8—4s.

„ 11 and 14—5s.

Under—3s. 6d.

(a) Unemployment Insurance Act, 1935, s. 31; 28 Halsbury's Statutes 518.

(b) *Ibid.*, s. 5 (3) (a); *ibid.*, 506.

(c) Old Age and Widows' Pensions Act, 1940 (c. 13), s. 2.

(d) S. 36; 27 Halsbury's Statutes 787. By s. 5 of the Unemployment Act, 1940 (c. 44), non-manual workers earning up to £420 are included.

(e) S. 36 (2). See *ante*, p. 292.

(f) *Ibid.* See S.R. & O., 1937, No. 263.

(g) S. 38; 27 Halsbury's Statutes 789. See S.R. & O., 1939, No. 582.

(h) See title MEANS TEST; S.R. & O., 1939, Nos. 584 and 1946, amending S.R. & O., 1936, No. 776.

(i) See also as to allowances for special needs due to winter conditions, S.R. & O., 1938, No. 806.

Where there is only one child in addition to not more than two adults, the amount allowed for the child must be not less than 4s.

Where the applicant is living otherwise than as member of such a household, the scale allowance is 16s.

Allowances must be paid in money and to the applicant himself, except in cases of "special difficulty" (*k*) where an officer (or, on appeal, the appeal tribunal) is of opinion that the applicant has failed to avail himself of opportunities of employment or training or that the interests of persons dependent upon him ought to be protected. He may then pay the whole or any part to a member of the household, or pay it otherwise than in cash, or grant it only on condition that the applicant attends at a work centre or similar place. An application must not, however, be dealt with in this way where the applicant has refused an offer of employment which would not have been considered suitable employment under the Unemployment Insurance Acts (*l*). [678]

Allowances paid to a person in respect of a period when his old age pension started to accrue may be treated (by direction of the M. of H.) as advances on account of the pension (*m*). [679]

Training Courses and Work Centres.—By sect. 37 of the Act of 1934 (*n*), the Board may, with the approval of the Minister of Labour, provide and maintain training courses for persons who have reached the age of eighteen, and may make contributions to the cost of those provided by the Minister or by local authorities. In order to make provision for further training, they may also enter into agreements with local authorities for such persons to be employed for periods up to three months upon work which will fit them for further employment. Any such agreement is subject to the consent of the Treasury and must provide for payment at the expense of the authority at the rate of wages customary in the district, and it may provide for contributions to be made by the Board in respect of any additional expenditure incurred by the authority by reason of the work being utilised as part of the training course.

An authorised officer of the Board may allow persons who have reached the age of eighteen to attend at a training course even if he is not in need of an allowance provided that he is registered for employment in the prescribed manner and has no work (*o*).

By sect. 39 (2) (*p*) an applicant may be granted an allowance while at a training course or course of instruction and payments may meanwhile be made to his dependants, if it appears that this will give him an opportunity of becoming fit for entry into or return to regular employment.

The Board may also provide and maintain work centres (*q*) for the purpose of affording occupations suitable for applicants whose cases have been decided as of special difficulty, or they may make arrangement with public assistance authorities for the attendance of such persons at any work centres or similar place provided by them. [680]

(*k*) S. 40; 27 Halsbury's Statutes 791.

(*l*) See s. 28 of the Unemployment Insurance Act, 1935; 28 Halsbury's Statutes 517.

(*m*) S. 27 of the Widows', Orphans and Old Age Pensions Contributions Pension Act, 1936; 29 Halsbury's Statutes 1220, replacing s. 49 of the Unemployment Assistance Act, 1934.

(*n*) 27 Halsbury's Statutes 789. See Camps Act, 1939; 32 Halsbury's Statutes 801.

(*o*) S. 43; 27 Halsbury's Statutes 794.

(*p*) 27 Halsbury's Statutes 791.

(*q*) S. 40, and see Sched. VIII. (3) (b) and (c); 27 Halsbury's Statutes 792, 822. As to the centres as established under the Relief Regulations Order, Art. 6, see S.R. & O., 1930, No. 186; 12 Halsbury's Statutes 1091.

Public Assistance Authorities and Unemployed Persons.—As it is an advantage for a public assistance committee to have as large a number as possible of the able-bodied unemployed in its area under the care of the Assistance Board it is an interested party in any appeal as to whether the Act of 1934 applies in any particular case. For this reason the public assistance authority has a right of appeal on the question and also as to whether a person should be suspended altogether (*r*) as shown below. Arrangements are to be made for the exchange of documents between public assistance officers and the officers of the Assistance Board (*s*). [681]

As already stated (*t*), arrangements may be made in cases of special difficulty for the attendance of persons receiving allowances at the work centres of public assistance authorities, or the allowance may be granted only upon condition that the applicant becomes an inmate of a workhouse, when it is paid to the authorities or to a member of his household while he is such an inmate (*u*).

Where an officer of the Board is satisfied that an applicant has persistently refused or neglected to maintain himself or his family or has persistently contravened conditions as to his allowance, he may make a special report to the appeal tribunal and the tribunal may direct that for a specified time no further application from him shall be considered (*a*). The applicant as well as the public assistance committee on whom he may be chargeable must be given the right to be heard by the tribunal (*a*). [682]

A public assistance authority may not, except as regards medical needs, order out-door relief to be given to any person to whom the Unemployment Assistance Act, 1934, applies, or to anyone in receipt of unemployment benefit, except in cases of urgent necessity. They may, however, order it for the dependants of any person who has been determined to be a case of special difficulty and is at a work centre or in a workhouse (*b*).

The Board must pay the public assistance authorities, up to the amount of the allowances which would have been granted to any applicant (i.) the cost of any out-relief given, (ii.) the cost of sudden or urgent relief, except relief given during any period during which he has contravened any conditions as to attendance at a work centre or as an inmate of a workhouse, (iii.) for the use of work centres in accordance with arrangements made, and (iv.) the cost of maintenance in a workhouse (*c*). [683]

Grants Based on Unemployment.—While grants from the Exchequer had been made in various ways for the relief of unemployment by means of relief works (*d*) and the Government contribution to insurance under the Unemployment Insurance Acts is in effect a payment from taxes in aid of the unemployed, for the first time, by the L.G.A., 1929, the ordinary grants made through Government departments to local

(*r*) Ss. 36 (3), 41 and Sched. VII. (6) (*c*); 27 Halsbury's Statutes 788, 798, 821.

(*s*) S. 50 (1); *ibid.*, 798.

(*t*) *Ante*, p. 295.

(*u*) S. 40 (2) (*d*) and Sched. VIII. (2); *ibid.*, 792, 822. See ss. 21—34 of the Poor Law Act, 1930; 12 Halsbury's Statutes 981—986.

(*a*) S. 41; *ibid.*, 798.

(*b*) Sched. VIII. (1); 27 Halsbury's Statutes 821. As to out-relief, see ss. 45—48 of the Poor Law Act, 1930, and as to sudden and urgent need, see s. 17 of the same Act; 12 Halsbury's Statutes 978, 989—991.

(*c*) Sched. VIII. (2); 27 Halsbury's Statutes 822.

(*d*) See title UNEMPLOYMENT RELIEF WORKS.

authorities in aid of the usual services were based partly on the consideration of the amount of unemployment in the district. By s. 86 and Part III. of Sched. IV. of that Act, the block grant was to be based on a "weighted population," and one of the reasons for weighting a population in an area was the amount of unemployment therein (e). The formula for the block grant was a complicated one and was to be reviewed at intervals. By the L.G. (Financial Provisions) Act, 1937 (f), Part III. of the Act of 1929 which contained the provision as to the Exchequer's contributions for block grants was repealed and replaced. [684]

(e) See title GENERAL EXCHEQUER GRANTS, and SUPPLEMENT.

(f) S. 2, Sched. I.; 30 Halsbury's Statutes 377.

UNEMPLOYMENT RELIEF WORKS

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*See also titles : GENERAL EXCHEQUER GRANTS ;
UNEMPLOYMENT.*

Introduction.—As mentioned in the article on "Unemployment" the practice of "setting to work" the able-bodied poor existed long before the Elizabethan Poor Law Act stabilised it on the Statute Book. During the eighteenth and nineteenth centuries, however, this work had been performed in the general workhouse and the system of giving out-relief had been steadily frowned upon by the Local Government Board. During the latter years of the nineteenth century it was proposed to put in hand relief works outside the Poor Law upon which men otherwise unemployed were employed for wages. At first this was done by means of voluntary funds, but the system was regularised in 1905 by the passing of the Unemployed Workmen Act, which set up distress committees in London and the larger towns (a). Some representatives of the guardians sat on the committees, but the committees were essentially municipal and not poor law. In practice, the relief works soon came to be an additional local establishment providing jobs of a particularly casual character for men of low industrial capacity. The distress committees continued their operations till 1914, but after the Great War they were not revived and the Unemployed Workmen Act, 1905, was finally repealed by the L.G.A., 1929 (b). Meanwhile the scheme of unemployment insurance had been developing as a method of dealing with the able-bodied unemployed, and had extended, with the great increase in unemployment after the war, to include other works by means of insurance benefit (c). In 1920, also, an Unemploy-

(a) See Introduction, p. 5, to Glens Unemployment Assistance, 1934.

(b) S. 12; 10 Halsbury's Statutes 891.

(c) See title MEANS TEST.

ment Grants Committee was set up, at first under a Treasury Minute, and later under the Development (Loan Guarantees and Grants) Act of 1929 (*d*). This committee advised the Minister of Labour on application for grants from Exchequer funds in aid of the cost of schemes of work proposed by local authorities and by certain other bodies for the relief of unemployment. It was found that the output of the schemes was far below normal and that the committee's work was a somewhat expensive method of relieving distress. It was therefore discontinued at the end of 1931. [685]

The Unemployment (Relief Works) Act, 1920 (*e*), was also passed for the purpose of making better provision for the employment of unemployed persons by facilitating the acquisition of, and the entry on, land required for works of public utility. After the passing of the Public Works Facilities Act in 1930 (*f*) this was seldom used, but it was continued in being by the Expiring Laws Continuance Act each year until 1937. It had been found that the work done by means of statutory provisions solely for the help of unemployment was invariably more expensive and less efficient than that carried out as the normal procedure of a local authority. Moreover, the whole system of Treasury grants to local authorities had been reformed by the L.G.A., 1929, and the new General Exchequer Contribution was distributed, in part at least, on a "weighted population" which included as a factor the percentage of unemployment in an area (*g*). Many unemployed, also, have found work in road making financed with the help of grants from the Road Fund. The Public Works Facilities Act, 1930, was, however, expected to assist a more speedy acquisition of land for public purposes in certain cases, and some of its sections have therefore been continued by the Expiring Laws Continuance Acts up to the present time. These are sect. 2 (*h*)—so far as it relates to local authorities but not to other undertakings—which provides for the appropriate Minister to authorise by order local authorities to purchase land compulsorily for certain purposes, with Sched. I. (*i*) as to the method of making the order; sect. 3 (*k*) which prevents this being done in regard to land of local authorities or statutory undertakings; sect. 5 (*l*) which provides for a simpler method of making orders by the Electricity Commissioners; and sects. 6, 7 and 8 (*m*) which relate to interpretation, etc. [686]

General Exchequer Contribution.—As already stated, by the L.G.A., 1929, as amended by the L.G. (Financial Provisions) Act, 1937, sect. 2, Sched. I., the method of assisting unemployment by special grant from the Treasury was merged into the block grant given to counties and county boroughs for their ordinary purposes, which include the provision of works of public utility. As the grant is distributed on a basis (*n*) which includes as a factor the percentage of unemployment in a district, this has the effect of increasing the grant where help is needed to provide the public works and services. [687]

(*d*) 12 Halsbury's Statutes 309.

(*e*) 20 Halsbury's 652, as amended by the Public Works Facilities Act, 1930, s. 4; 23 Halsbury's Statutes 774.

(*f*) 23 Halsbury's Statutes 769.

(*g*) See *post*.

(*h*) 23 Halsbury's Statutes 773.

(*i*) *Ibid.*, 777.

(*k*) *Ibid.*, 774.

(*l*) *Ibid.*, 775.

(*m*) *Ibid.*, 775, 776.

(*n*) See titles GENERAL EXCHEQUER GRANTS and UNEMPLOYMENT.

Agricultural Lands (Utilisation) Act, 1931.—In order to help with unemployment in county districts and to settle unemployed men on the land, the Agricultural Lands (Utilisation) Act (*o*) was passed in 1931. Sects. 1—4 of this Act (*p*) give the M. of A. power to acquire and hold land for demonstration purposes and for the purpose of reconditioning it; sects. 5 to 12 (*q*) give the Minister power to provide small holdings, with financial assistance to unemployed persons and agricultural workers, and demonstration holdings; to act in default of county councils which have not provided small holdings; and also give power to county councils to provide cottage holdings (*r*). The remainder of the Act deals with allotments (*s*)—sects. 13 and 14 (*t*) give power to the Minister to provide allotments of not more than one acre for unemployed persons, and to defray losses incurred by local authorities in providing allotment gardens for unemployed persons; sect. 15 (*u*) lays down the rule that unemployed persons need not vacate their allotments on entering employment; and sect. 16 (*a*) enables the Minister to make grants to assist unemployed persons with seeds, fertilisers and equipment. [688]

Special Areas Acts, 1934, 1937.—The latest method of providing unemployment relief works has been by means of special grants to be spent in special areas, formerly called distressed areas, through special areas commissioners. Their powers are set out in two Acts passed in 1934 and 1937, the first of which was to end on December 31, 1936, unless continued. By sect. 1 of that Act (*b*) the commissioners were appointed to investigate and make suggestions as to help which could be given. They were to act under the general control of the appropriate Minister, that is the Minister of the Department in charge of the work as to which suggestions were made, and to co-operate with these departments, the local authorities, and voluntary organisations in the area, and with the Assistance Board (*bb*) in matters relating to the promotion of the welfare of the persons dealt with; and they are also to make recommendations to Government departments as to the removal of difficulties which appeared to prevent or to hinder measures of betterment. The first commissioner for England and Wales was Sir Malcolm Stuart (*c*) and he was followed in 1936 by Sir George Gillett (*d*). By sect. 7 (*e*) the powers of the commissioners might be transferred to the Assistance Board (*bb*) or other Government departments on the expiration of the Act. The special areas are set out in the First Schedule to the Act (*f*). They include in England and Wales the county boroughs of Gateshead, Merthyr Tydfil, Newcastle-on-Tyne, South Shields, Sunderland, Tyne-

(*o*) 24 Halsbury's Statutes 46.

(*p*) *Ibid.*, 47—53.

(*q*) *Ibid.* 53—58.

(*r*) See title SMALL HOLDINGS.

(*s*) See title ALLOTMENTS.

(*t*) 24 Halsbury's Statutes 59, 60.

(*u*) *Ibid.*, 61.

(*a*) *Ibid.*, 62.

(*b*) Special Areas (Development and Improvement) Act, 1934; 27 Halsbury's Statutes 827.

(*bb*) Formerly the Unemployment Assistance Board, set up under the Unemployment Assistance Act, 1934, s. 35; 27 Halsbury's Statutes 786, and renamed the Assistance Board by the Old Age and Widows' Pensions Act, 1940 (c. 13), s. 10.

(*c*) See Reports, published July 1935, February 1936, and October 1936.

(*d*) See Report for twelve months ending September 30, 1937, and the discussion therein of the relationship between the commissioner and local authorities.

(*e*) 27 Halsbury's Statutes 831.

(*f*) *Ibid.*, 832.

mouth and West Hartlepool and county districts in the counties of Durham, Northumberland, Cumberland, Monmouth, Glamorgan, Brecknock and Pembroke. By sect. 2 (g) a fund of two million pounds was set aside by the Treasury to be spent by the commissioner, and after the second report a further sum of three millions. By sect. 4 and Sched. III. (h) the commissioner was given power to acquire land compulsorily.

Further details of the powers of the commissioner were set out in sect. 1. They were to include work for the initiation, organisation and prosecution of measures outside the special areas, if he was satisfied that they would provide work for a substantial number of persons from those areas (i). His powers, however, under this Act (k) were not to include the carrying on of any undertaking for the purposes of gain or the provision of financial assistance for such an undertaking; nor might they provide financial assistance by way of grant or loan to any local authority. This was in order to prevent duplication of grant from the commissioner and from a Government department. But assistance might be given towards the cost of any works for which no specific grant was payable by any Government department or towards the provision of small holdings and allotments with the consent of the appropriate Minister after consultation with his department. By the Special Areas (Amendment) Act, 1937 (l), he was enabled to make a grant towards expenses incurred by local authorities for the repair or improvement of a street in a special area, certified by the M. of T. as being wholly or mainly required for purposes other than that of through traffic. By sect. 5 of the Act of 1934 (m) contributions made by the commissioner might be disregarded in determining losses under sects. 1 and 2 of the Small Holdings and Allotments Act, 1926 (n).

In regard to purposes of gain, a proviso to sect. 1 of the Special Areas Act, 1934 (o), enabled a contribution to be made where the undertaking was carried on for gain but primarily to provide a means of livelihood for the persons engaged in it with a view to their establishment in a position of independence or partial independence of assistance under the Unemployment Assistance Act, 1934 (p), or the Acts relating to poor relief. By sect. 4 (2) of the Act of 1937 (q) the commissioners were also enabled to contribute to any expenses incurred by owners or occupiers of agricultural land in regard to works of field drainage even if for gain. [689]

The Acts of 1934 and 1937 have been continued until December 31, 1940. The Act of 1937 gave the commissioner the powers already mentioned and further powers in regard to factories and factory sites. By sect. 1 thereof in order to induce persons to establish undertakings in special areas, the commissioner was empowered to let a factory even though for the purposes of gain, provided the rent would produce a return as nearly as possible to a reasonable rate of interest on the sums expended in providing the factory. It also, by sect. 3, enabled him to provide financial assistance in rent, income tax or rates, to persons

(g) 27 Halsbury's Statutes 828.

(h) *Ibid.*, 829, 834. See also S.R. & O., 1936, No. 265.

(i) S. 1 (6); 27 Halsbury's Statutes 828.

(k) S. 1 (5); *ibid.*, 828.

(l) 30 Halsbury's Statutes 994.

(m) 27 Halsbury's Statutes 830.

(n) 1 Halsbury's Statutes 322.

(o) 27 Halsbury's Statutes 827.

(p) *Ibid.*, 786.

(q) Special Areas (Amendment) Act, 1937; 30 Halsbury's Statutes 994.

carrying on new factories in special areas for five years after the agreement was made. By the Finance Act, 1937 (*r*), relief may also be given in respect of any national defence contribution which may become chargeable on profits.

By sect. 5 of the Special Areas (Amendment) Act, 1937 (*s*), the Treasury is empowered to provide financial assistance to a site-company for the purpose of providing factories by subscription to the share capital or by loan up to one-third in special areas and in others certified by the Ministry of Labour as having had for a considerable time serious unemployment with no immediate likelihood otherwise of substantial employment, and being mainly dependent on one or two industries that are depressed. This assistance is to be extra to that provided for the use of the commissioner, and the Treasury is also empowered by sect. 6 to grant loans to persons carrying on industrial undertakings in special areas after the passing of the Act. [690]

(*r*) S. 19 (7); 30 Halsbury's Statutes 358.

(*s*) 30 Halsbury's Statutes 995.

UNREASONABLE AND EXCESSIVE USER OF HIGHWAYS

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See also titles :

DEDICATION AND ADOPTION OF HIGHWAYS ;
HIGHWAY AUTHORITIES ;
HIGHWAY NUISANCES ;

HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO ;
ROAD PROTECTION ;
ROAD TRAFFIC.

Nuisance by Unreasonable User.—See HIGHWAY NUISANCES.

Negligent User at Common Law.—It is submitted that an action will lie at common law at the suit of a highway authority for damages for destruction of or injury to a highway so as to obstruct the public right of passage by the negligent use of excessive weight or traffic on the highway, though it has been held that in the absence of evidence of negligence there is no liability for repairs necessitated by traffic which had not destroyed the highway or rendered it dangerous or inconvenient to the public use (*a*). [691]

Road Traffic Act, 1930, s. 54 (*b*).—The more usual remedy is to proceed under this statutory provision. Where it appears to the highway authority by the certificate (*c*) of their surveyor that extraordinary (*d*) expenses have been incurred in repairing a road, by com-

(*a*) *Glasgow Corpn. v. Barclay, Curle & Co., Ltd.*, [1922] S. C. 413 ; 26 Digest 462, *r* and *s*.

(*b*) 23 Halsbury's Statutes 649.

(*c*) For a form of certificate, see 7 Ency. Forms (2nd ed.) 231.

(*d*) As to the meaning of "extraordinary" and "average" expenses, see *Billericay Rural Council v. Poplar Union and Keeling*, [1911] 1 K. B. 734 ; *affd.*, [1911] 2 K. B. 801, C. A. ; 26 Digest 475, 1876.

parison with the average expense of repairing the road or similar roads in the neighbourhood (e), by reason of excessive weight or other extraordinary traffic passing along the road, the authority may recover by action in the High Court (or county court where the amount claimed does not exceed £500) the amount of such expenses proved to be attributable to the damage caused by such traffic, from any person (in the Act referred to as "the undertaker") by or in consequence of whose order the traffic has been conducted.

Neglect on the part of a highway authority to repair a road is not a complete answer to such a claim, but indirectly it may be important in considering the amount of damage (f).

"Road" means any highway and any other road to which the public has access, and includes bridges over which a road passes (g). [692]

Excessive Weight.—This term refers to the weight put upon the road by a single vehicle with its load, and not to the aggregate weight carried by a number of vehicles or by the same vehicle on different journeys (h). Whether the weight is excessive or not must be decided in relation to the ordinary weights of vehicles upon the road in question (i). Comparison should be made with the ordinary weights on such road in previous years (k), but weights excessive in one decade may not be so in the next, as extraordinary traffic may become ordinary (l). [693]

Other Extraordinary Traffic.—This term refers to traffic of an exceptional nature, either in the quality or quantity thereof, or the method or time of user of the road, such as substantially to increase the burden borne by the road from ordinary traffic, and to cause damage and expense beyond what is usual (m). Comparison should be made with the ordinary traffic of the road, but where a road is used for the carriage of timber at intervals in the ordinary course of forestry, the timber traffic on the road, when it occurs, may be ordinary (n).

Traffic brought upon the road by one person cannot be regarded as extraordinary merely because he uses the road more than others. A comparison must be made with the ordinary user of the road as a whole by all who use it (o). [694]

Recovery of Expenses.—The surveyor's certificate is a condition precedent to an action, and the damage to the highway must have been

(e) These need not, it seems, be in the same highway area as that where the damage is done.

(f) *Savin v. Oswestry Highway Board* (1830), 44 J. P. 766; 26 Digest 475, 1873; *Hemsworth R.D.C. v. Micklethwaite* (1904), 2 L. G. R. 1084; 26 Digest 468, 1790; *Aveland (Lord) v. Lucas* (1880), 5 C. P. D. 351, C. A.; 26 Digest 460, 1763; *Kent County Council v. Kent Coal Concessions, Ltd.* (1908), 72 J. P. 507; on appeal (1909), 73 J. P. 305, C. A.; 26 Digest 468, 1822.

(g) Road Traffic Act, 1930, s. 121; 23 Halsbury's Statutes 686.

(h) *Hill v. Thomas*, [1893] 2 Q. B. 333, C. A.; 26 Digest 462, 1771; *Kent County Council v. Vidler*, [1895] 1 Q. B. 448, C. A.; 26 Digest 467, 1810.

(i) *Aveland (Lord) v. Lucas* (1880), 5 C. P. D. 211, 351, C. A.; 26 Digest 460, 1763; *R. v. Ellis* (1882), 8 Q. B. D. 466; 26 Digest 461, 1764; *Butt (Henry) & Co., Ltd. v. Weston-super-Mare U.D.C.*, [1922] 1 A. C. 340; 26 Digest 462, 1772.

(k) *Hemsworth R.D.C. v. Micklethwaite*, *supra*.

(l) See *Bromley R.D.C. v. Croydon Corpn.* (1907), 5 L. G. R. 453, at pp. 457, 458.

(m) *Hill v. Thomas*, *supra*.

(n) *Baglan Highway Board v. Monmouth Steam Co.* (1881), 46 J. P. 598; 26 Digest 466, 1804, explained in *Geirnydd Rural Council v. Green* (1908), 72 J. P. 321; *affd.*, [1909] 2 K. B. 845, C. A.; 26 Digest 462, 1773.

(o) *Hill v. Thomas*, *supra*; *R. v. Williamson* (1881), 45 J. P. 505; 26 Digest 468, 1786; *Butt (Henry) & Co., Ltd. v. Weston-super-Mare U.D.C.*, *supra*.

made good and expenses actually incurred. Expenses can only be recovered for damage done within twelve months of the issue of the writ (*p*).

Where, however, damage is done to a road as a result of work extending over a long period, the action may, if within the provisions of sect. 54 (2) of the Road Traffic Act, 1930, be brought within six months of the completion of the work and expenses recovered for damage done more than twelve months before action (*q*).

If the damage has been done by a public authority within the scope of sect. 21 of the Limitation Act, 1939 (*r*), the time limit of one year under that section applies, where the damage has been caused directly by the authority through its servants or agents and not indirectly through an independent contractor (*q*).

The measure of damages is *prima facie* the difference between the average sum expended in previous years and the year in question, or a quarter or other period may be taken as the basis, provided it deals with ordinary expenditure. If the damage is such that it is necessary to remake the road entirely, the whole cost may be recovered, even if the road is made up to a higher standard, but where remaking is not essential, though convenient for carrying out improvements, the court must apportion the expenses (*s*). [695]

London.—Sect. 54 of the Road Traffic Act, 1930, does not apply to London (sect. 54 (3)). [696]

(*p*) Road Traffic Act, 1930, s. 54 (2); 28 Halsbury's Statutes 650; *Bromley R.D.C. v. Croydon Corpn.*, [1908] 1 K. B. 353, C. A.; 26 Digest 469, 1827.

(*q*) *Kent County Council v. Folkestone Corpn.*, [1905] 1 K. B. 620, C. A.; 26 Digest 472, 1850.

(*r*) 32 Halsbury's Statutes 235.

(*s*) See the cases cited in the footnotes to 16 Halsbury (2nd ed.) 392.

UN SOUND FOOD

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See also titles :

ADULTERATION ;
FOOD AND DRUGS ;
HORSEFLESH, SALE OF ;
ICE CREAM ;

IMPORTED FOOD ;
MEAT ;
MILK AND DAIRIES ;
SLAUGHTERHOUSES.

Introductory.—The general law governing the sale and exposure for sale of unsound food is to be found in the Food and Drugs Act, 1938 (*a*),

and in various regulations and orders dealing with specific articles of food, particularly the Public Health (Meat) Regulations, 1924 and 1925 (b); the Public Health (Shellfish) Regulations, 1934 (c), and the Milk and Dairies Order, 1926 (d). The Act of 1938, though largely a consolidating statute, amends the previously existing law in many respects, but regulations and orders made under earlier statutes will remain in force until revoked (e). [697]

Unsound Food Distinguished from Adulterated Food.—By “unsound food” is meant food which is diseased, decayed, rotten, unwholesome or bacterially or otherwise unfit for human consumption. The phrase does not ordinarily cover food to which an injurious chemical ingredient has been added or which has been adulterated by dilution or by the addition or subtraction of anything so as to make the food not of the nature, substance or quality demanded by the purchaser. For provisions dealing with adulterated food, see the titles ADULTERATION, Vol. I., p. 126, and FOOD AND DRUGS, Vol. VI., p. 115. [698]

Common Law Offences.—It is an indictable misdemeanor knowingly to give to any person food which is not fit to eat with intent to do bodily harm. Damages may be claimed against a seller of unwholesome food if any injury has resulted therefrom. With such proceedings, however, local authorities as such are rarely concerned. [699]

Statutory Offences.—Under the Act of 1938, an offence is committed by any person who sells, or offers or exposes for sale, or has in his possession for sale or for preparation for sale, or deposits with or consigns to any person for any such purposes, any food intended for, but unfit for, human consumption (sect. 9) (f). All articles commonly offered for human consumption are, if offered, exposed or kept for sale, presumed until the contrary is proved, to be intended for human consumption; and any substance capable of being used in the composition or preparation of an article of food if found on premises where that article of food is prepared is similarly to be presumed to be intended for such use (sect. 81 (4)) (g).

Where a person is charged with the offence of depositing or consigning unsound food, it is a defence to prove that he gave notice to the person with whom the food was deposited or to the consignee that the food was not intended for human consumption; or to prove that when the food was delivered or dispatched it was fit for consumption, or that the person charged did not know and could not with reasonable diligence have ascertained that it was unfit (sect. 9 (3)) (h). But it is not necessary for the prosecution to prove *mens rea* affirmatively. A defendant may in certain circumstances be able to set up the defence of warranty (sect. 84) (i).

Under sect. 8 (j), the M. of H. is empowered to make regulations dealing with the importation, preparation, transport, storage, exposure for sale and delivery of food, for the purpose of preventing danger to health. Under the P.H.A. it was an offence wilfully to commit a breach of food regulations made by the Minister under those Acts.

(b) S.R. & O., 1924, No. 1432; 1935, No. 187.

(c) S.R. & O., 1934, No. 1342.

(d) S.R. & O., 1926, No. 821.

(e) All such regulations and orders in force up to September, 1940, will be conveniently found in Vol. III. of Lumley's Public Health (11th ed.), 1940.

(f) 31 Halsbury's Statutes 258.

(g) *Ibid.*, 304.

(h) *Ibid.*, 258.

(i) *Ibid.*, 306.

(j) *Ibid.*, 257. See also s. 92; *ibid.*, 309.

While the regulations so made remain in force, an offence is now committed even if not wilful, but the maximum penalty is now less severe than under the repealed Acts. [700]

Administrative Authorities.—The local authority for the administration of those provisions of the Act of 1938 which relate to unsound food is the council of a borough, metropolitan borough, urban district or rural district (*k*). County councils, however, also have power to institute proceedings (*l*), as indeed have private individuals. [701]

Examination and Seizure.—Under the Act of 1938, a vendor of unsound food may be prosecuted in respect of selling or exposing for sale, even though the food may not have been seized by an officer of the local authority or placed before a justice for inspection. Under the now repealed provisions of the P.H.A., such seizure and inspection were necessary, and this procedure will doubtless continue to be used in the majority of instances. The M.O.H. of the local authority or other authorised officer (*m*) has power to examine all food coming within the scope of the legislation including food which has been sold and is still on the vendor's premises, to seize food which appears to be unfit for human consumption and to take it, without unreasonable delay, to a justice of the peace for inspection and possible condemnation (*n*). Authorised officers have a right at all reasonable times to enter premises for the performance of their duty, on production of documentary evidence of their authority (*o*). In certain circumstances, an officer may apply, by sworn information, to a justice for a search warrant, for example, when premises are unoccupied, when the occupier is temporarily absent, when the case is one of urgency, or when an ordinary application for admission would defeat the object of the visit (sect. 77). The authorised officer may also detain a cart, barrow or similar vehicle, or a receptacle containing food intended for human consumption, and deal with unsound food found therein as if it were food exposed or in possession for sale (*p*). Food offered as a prize or reward at an entertainment, or deposited, offered or given away for advertising purposes, is also within the scope of the general prohibition relating to unsound food (*q*).

A justice before whom seized food is placed for inspection must, if satisfied that the food is unfit for human consumption, order it to be destroyed or to be so disposed of as to prevent it from being used for human consumption (*r*). If he refuses so to condemn the food, the local authority must compensate the owner for any depreciation in its value resulting from its seizure and removal (*s*). Any dispute arising with respect to such depreciation or compensation is to be determined by arbitration, subject to a provision that where the compensation claimed does not exceed £50 the questions at issue may, on the application of either party, be determined by a court of summary jurisdiction (*t*).

An inspecting justice may, but need not, be a member of a court before whom the offender may subsequently be charged with an offence relating to the unfit food (*a*). [702]

(*k*) S. 64; 31 Halsbury's Statutes 292.

(*m*) See s. 100; *ibid.*, 313.

(*o*) S. 77; *ibid.*, 300.

(*q*) S. 11; *ibid.*

(*s*) S. 10 (4); *ibid.*, 260.

(*a*) S. 9 (6); *ibid.*, 259.

(*l*) S. 65 (3); *ibid.*, 293.

(*n*) S. 10; *ibid.*, 259.

(*p*) S. 12; *ibid.*, 260.

(*r*) S. 10 (8); *ibid.*, 259.

(*t*) S. 86; *ibid.*, 307.

Precautions against Contamination.—Sects. 13 to 16 of the Food and Drugs Act, 1938 (b) incorporate, with minor amendments, most of the legislation previously in force and make the statutory provisions uniform and of general application. The main effects of these sections are as follows :

Rooms, including shops, cellars and sheds in which food (other than milk, which is specially dealt with in another part of the Act) is sold, offered, exposed or deposited for sale or for preparation for sale, must comply with a variety of requirements designed to ensure cleanliness, due ventilation, freedom from offensive smells, and so forth. Such rooms must not be used as sleeping places. All workers in the rooms must observe cleanliness with regard to themselves, their clothing, and all articles and utensils in the rooms. Except where all food is kept in closed containers, there must be in or near every room in which food is kept for sale (etc.) a sufficient supply of hot and cold water and washing materials for the workers' use. Penalties may be incurred by the occupier of a room in which the requirements are disobeyed, or in certain circumstances by other persons who commit, or permit, contraventions. Moreover, owners of premises have certain responsibilities under the Act, if they let rooms structurally unfit, or if they permit an unfit room to be used after receiving notice of its structural unfitness from the local authority. There is a saving clause at the end of sect. 13 which excludes from the operation of the whole section, except so far as may be expressly provided by food regulations, all premises used for the sale, storage and preparation of articles consisting of materials which are not of animal or vegetable origin if the premises are not otherwise used for any purpose in connection with the preparation, storage or sale of food.

The local authority is empowered to make bye-laws for securing sanitary and cleanly conditions in connection with the handling, wrapping and delivery of any food sold or intended for sale for human consumption, and in connection with the exposure of such food in the open air. [703]

Food Poisoning.—A medical practitioner, who suspects that a patient is suffering from food poisoning, is required to send a notification to the M.O.H. of the district—who has power, when food poisoning is suspected and a sample of the food has been procured, to give notice to the person in charge of the food, prohibiting its use for human consumption—or its removal (except to some specified place) until his investigations are completed. If it then appears that the food is in fact unfit, the M.O.H., may deal with it in the ordinary way, by taking it before a justice for inspection and condemnation (c). [704]

Ice Cream.—There are special provisions to secure that ice cream shall be made and stored in satisfactory conditions, and premises used for its sale, manufacture for sale, or storage must be registered with the local authority, which, subject to the adoption of the prescribed procedure, may refuse to register unsatisfactory premises (d). Dealers in ice cream in streets must have their name and address conspicuously displayed on the stall or vehicle ; or on a tray, pail or other container

(b) 31 Halsbury's Statutes 261—265.

(c) S. 18 ; 31 Halsbury's Statutes 266.

(d) S. 14 ; *ibid.*, 263.

used without a stall or vehicle. Every manufacturer of, or dealer in, ice cream is required to notify forthwith the local M.O.H., when any person living or working in or about the premises is found to be suffering from a milk-borne disease. The M.O.H. may then order that ice cream which he suspects to be likely to cause such disease shall not be removed except as he may specify; and if his suspicions are confirmed he must cause the ice cream to be destroyed without taking it to a justice for inspection. If, however, his suspicions are not confirmed, he must withdraw his order, compensation being payable subject to certain conditions and limits (e). See also title ICE CREAM. [705]

Manufactured and Potted Foods.—That part of the preceding paragraph which applies to the registration of premises of ice cream manufacturers applies also to premises used for the preparation or manufacture of sausages, or any potted, pressed, preserved (including cooked) or pickled food intended for sale for human consumption. And a local authority may by resolution resolve that the names and addresses of street vendors of any food (except milk) must be legibly and conspicuously displayed on vehicles or receptacles, as in the case of ice cream. [706]

Milk.—The M. of H. has power to make regulations for a large number of purposes, designed to safeguard the public from milk which is contaminated, dirty or infectious. Under the existing law, these regulations—which are summarised in the title MILK AND DAIRIES—are for the most part to be found in the Milk and Dairies Order, 1926 (f), made under the Milk and Dairies (Consolidation) Act, 1915 (g). “Milk” for the purpose of such regulations includes milk intended for manufacture into products for sale for human consumption as well as milk intended to be sold as such.

The provisions of previously existing legislation with regard to the sale of tuberculous milk (Vol. IX., p. 192) are substantially reproduced in sect. 25 of the Act of 1938 (h), the enforcement authority for this purpose being the council of a county or county borough, though local sanitary authorities also have a power to institute proceedings. [707]

Meat.—Apart from the requirements which apply to unsound food generally, provisions for the protection of consumers against unsound or unwholesome meat are to be found in the Public Health (Meat) Regulations, 1924 and 1935 (i) (see Vol. VIII., pp. 408 to 410), and, so far as imported meat is concerned, in the Public Health (Imported Food) Regulations, 1925 (j) and 1937 (k), and the Importation of Meat, etc. (Wrapping Materials) Order, 1932 (l).

Further protection for the public is contained in sect. 19 of the Food and Drugs Act, 1938 (m), which forbids the exposure for sale, or sale, for human consumption, of any part of an animal which has

(e) S. 37; 31 Halsbury's Statutes 277.

(f) S.R. & O., 1926, No. 321.

(g) 8 Halsbury's Statutes 864.

(h) 31 Halsbury's Statutes 270.

(i) S.R. & O., 1924, No. 1432; 1935, No. 187.

(j) S.R. & O., 1925, No. 273.

(k) S.R. & O., 1937, No. 329.

(l) S.R. & O., 1932, No. 317.

(m) Ss. 57, 58; 31 Halsbury's Statutes 287, 288. See title SLAUGHTER-HOUSES AND KNACKERS' YARDS.

been slaughtered in a knacker's yard (*n*) and in a variety of requirements with respect to slaughterhouses and also knackers' yards. All slaughterhouses require to be licensed by the local authority, which may make bye-laws for securing proper management and sanitary conditions. The local authority must make bye-laws for the same purpose with respect to any slaughterhouse which the authority may itself provide (*o*).

The provisions of earlier enactments relating to the sale of horse-flesh (see title HORSEFLESH, SALE OF) are substantially reproduced in sect. 38 of the Food and Drugs Act, 1938 (*p*). [708]

Shellfish.—Shellfish, being especially liable to unsoundness, forms the subject of special legislation, and local authorities have a duty to try to trace the "laying" of suspected shellfish and powers to prohibit the distribution of unsound or infectious shellfish when the M.O.H., reports that such action is required (*g*). Further, a county council or local authority may provide tanks and the like for the cleansing of shellfish, including its subjection to any germicidal treatment (*g*). [709]

Importation.—It is unlawful to import into England and Wales, for sale for human consumption, any food which has been examined and found to be unsound. The M.O.H. of a local or port health authority, or any medical practitioner appointed for the purposes by such an authority, has power to examine any food which has been or is about to be landed in his district. He may procure samples and serve a notice on the importer forbidding the removal of the food except to some specified place. He may also seize unsound food on its importation and take it before a justice.

The M.O.H. of a local or port health authority has also special powers and duties with respect to imported meat. (See Vol. VII., p. 188.) [710]

London.—Sect. 150 of the P.H. (London) Act, 1936 (*r*), makes special provision as to inspection and destruction of unsound meat, etc. Any medical officer of health or sanitary inspector may at all reasonable times enter any premises and inspect and examine any animal intended for the food of man which is exposed for sale, or deposited for the purpose of sale, or of preparation for sale, and any article, whether solid or liquid, intended for the food of man and sold or exposed for sale or deposited as aforesaid. On summary conviction for an offence under the section a fine not exceeding £50 may be imposed in respect of every animal or article, or if the article consists of fruit, vegetables, corn, bread or flour, for every parcel thereof so condemned; or imprisonment may be imposed for not more than six months. The Act confers no power of compensation. The section further provides that, where it is shown that any article liable to be seized under the section and found in the possession of any person was purchased by him from another person for food and when so purchased was in such a condition as to be liable to be seized, the person who so sold the same shall be liable to a penalty unless he proves that at the time he sold the article he did not know, and had no reason to believe, that it was in such a condition. If a person has in his possession any

(*n*) Public Health (Shellfish) Regulations, 1934; S.R. & O., No. 1342.

(*o*) 31 Halsbury's Statutes 266.

(*g*) *Ibid.*, 279.

(*p*) *Ibid.*, 278.

(*r*) 30 Halsbury's Statutes 531.

article unsound, unwholesome or unfit for the food of man, he may, by written notice, require the sanitary authority to remove it as if it were trade refuse. Sect. 13 of the Food and Drugs Act, 1938 (*s*), contains sanitary provisions as to premises used for sale, etc., of food.

Under sect. 17 of the Food and Drugs Act, 1938 (*t*), if a medical practitioner becomes aware or suspects that a person attended by him is suffering from food poisoning he must notify the district medical officer. A penalty of 40*s.* may be imposed for failure; a fee of 2*s.* 6*d.* is to be paid to the practitioner for each notification arising from private practice and 1*s.* for cases arising from his practice as medical officer of a public body or institution. [711]

(*s*) 31 Halsbury's Statutes 265.

(*t*) *Ibid.*, 261.

UNSOUND MIND, PERSONS OF

See PERSONS OF UNSOUND MIND; RATE-AIDED PERSONS OF
UN SOUND MIND.

URBAN DISTRICT COUNCIL

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See also titles : URBAN DISTRICT COUNCIL ACCOUNTS ;
URBAN DISTRICT COUNCILS ASSOCIATION.

Introductory.—The title “urban district council” was first used in the L.G.A., 1894, sect. 21 (1) (*a*), making provision for urban sanitary authorities to be known after the coming into operation of that Act by the title which has held good for over forty years, whereas between 1848 and 1894 urban areas were to some extent governed by “Local Boards of Health” (P.H.A., 1848) and “Urban Sanitary Authorities” (P.H.A., 1872).

The P.H.A., 1875, in Part II. (*b*) referred to local authorities in England and Wales as urban sanitary and rural sanitary authorities, and in the section of the Act dealing with the transfer of the powers of surveyors of highways refers to them as urban authorities. The 1875

(*a*) 10 Halsbury's Statutes 792.

(*b*) 13 Halsbury's Statutes 627 *et seq.*

Act (a consolidating measure) in fact repealed the whole of the 1872 Act, and later enactments have in turn repealed a large number of the provisions of the 1875 Act. Three other Acts, mainly adoptive, or requiring an Order to put them in force, conferred additional powers on urban district councils, namely the P.H.A. Amendment Act, 1890 (*c*), the P.H.A. Amendment Act, 1907 (*d*), and the P.H.A., 1925 (*e*), these in turn being affected by the repeal sections of the P.H.A., 1936 (*f*).

The L.G.A., 1929 (*g*), made important changes in the functions of U.D.Cs., and can be said to be the outcome of the Second Report of the Royal Commission on Local Government (*h*). One of the principal provisions of this Act, so far as urban authorities are concerned, is sect. 46 (*i*), which laid down the procedure for the rearrangement of county districts and the first general review of such districts by county councils. Sect. 47 (*k*) made provision for subsequent reviews; this power is now contained in sect. 146 of the L.G.A., 1933 (*l*). The latter Act followed to a large extent the recommendations of the Royal Commission on Local Government in their Final Report (*m*).

Under the various headings which follow will be found the effect of the 1933 Act on U.D.Cs., their constitution, membership, meetings, proceedings and functions, together with matters relating to officers and staff.

Sect. 1 of the L.G.A., 1933 (*o*), for the purposes of local government, divided England and Wales into administrative counties and county boroughs and administrative counties were divided into county districts, being either non-county boroughs, urban districts or rural districts; county boroughs and county districts to consist of one or more parishes. Sub-sect. (2) (*d*) provides that urban districts shall be the urban districts other than boroughs existing at the passing of the Act, *i.e.* June 1, 1934, and sub-sect. (2) (*f*) provides that the parishes shall be the urban parishes which at the passing of the Act were comprised in boroughs or urban districts. Sect. 129 of the 1933 Act (*p*) lays down the initial procedure whereby an urban district may be created a municipal borough on a petition to His Majesty praying for the grant of a charter of incorporation. A majority of the members of the U.D.C. must pass the statutory resolution before the petition can be presented and a meeting specially convened must be held for the purpose of passing such resolution; a further specially convened meeting must be held not earlier than one month after passing of the aforesaid resolution, and this must be confirmed by a like majority.

Provisions dealing with the alteration, division, transfer of parts and unions of existing districts and formation of new districts are contained in sect. 141 of the 1933 Act (*q*), and sect. 147 (*r*) deals with the question of the change in the name of a district with the consent of the county council. [712]

Constitution and Membership.—The L.G.A., 1933, provides that for every urban district there shall be an U.D.C. consisting of the chairman

(*c*) 13 Halsbury's Statutes 824 *et seq.*

(*e*) *Ibid.*, 1115 *et seq.*

(*g*) 10 Halsbury's Statutes 883 *et seq.*

(*i*) 10 Halsbury's Statutes 916.

(*l*) 26 Halsbury's Statutes 384.

(*o*) 26 Halsbury's Statutes 306.

(*q*) *Ibid.*, 380.

(*d*) *Ibid.*, 911 *et seq.*

(*f*) 29 Halsbury's Statutes 309 *et seq.*

(*h*) Cmd. 3213 (October, 1928).

(*k*) *Ibid.*, 918.

(*m*) Cmd. 3436 (November, 1929).

(*p*) *Ibid.*, 374.

(*r*) *Ibid.*, 385.

and councillors and the council shall have all such functions as are vested in the U.D.C. by that Act or otherwise (sect. 31 (1)) (s).

The U.D.C. is a body corporate by the name of the urban district and has perpetual succession and a common seal, with power to hold land for purposes of their constitution without licence in mortmain (sect. 31 (2)) (t). [718]

Chairman and Vice-Chairman.—The chairman of a district council is elected annually by the council as the first business to be transacted at the annual meeting and he may be chosen from among the councillors or persons qualified to be councillors of the district; he cannot be paid a salary in his capacity of chairman, although the Royal Commission on Local Government (a) came to the conclusion "that the differences between the circumstances in many boroughs and urban districts, particularly the larger districts, are not such as to justify a continuance of the difference between the powers of the two classes of authorities to make an allowance to the chairman of the council. We therefore recommend that the provisions of sect. 15 (4) of the Municipal Corporations Act, 1882 (b), should be extended so as to enable an U.D.C. to grant an allowance to the chairman of the council. . . ."

The chairman holds office until his successor is elected; he is a Justice of the Peace by virtue of his office, and whilst he is in office he retains his membership of the local authority notwithstanding the fact that he might have ceased to be a councillor by having retired or failed to secure re-election.

There is no obligation on the part of a district council to appoint a vice-chairman; if appointed, *he must be a member of the council*, and he continues in office in the same way as the chairman except that he holds office until immediately after the election of the chairman and not until his successor is appointed. (Note: the chairman is elected whilst the vice-chairman is appointed.) Except that the vice-chairman cannot act in the place of the chairman as justice of the peace he may have, subject to standing orders, all the powers of the chairman. [714]

Councillors. (a) *Term of Office*—Sect. 35 (3) (c).—Term of office—three years, one-third of total number of councillors for district or ward who have held office for longest time without re-election retire on April 15, and newly elected councillors come into office on that day. The Royal Commission on Local Government in the Final Report (d) suggested . . . "That the elections for urban district councils and the elections for borough councils should be held at the same time. It would, however, be desirable that action on this recommendation should be deferred until after the first general review of county districts, for which provision is made in sect. 46 of the L.G.A., 1929" (e). Effect has not been given to this suggestion.

The county council may by order direct that the whole of the members shall retire simultaneously on April 15 in every third year. [715]

(b) *Qualification for election and holding office*—Sect. 57 (f).—If a person is of full age and a British subject he is qualified to be elected

(s) 28 Halsbury's Statutes 320.
(a) Cmd. 3486, p. 117.
(c) 26 Halsbury's Statutes 321.
(e) 10 Halsbury's Statutes 916.

(t) *Ibid.*, 320.
(b) 10 Halsbury's Statutes 581.
(d) Cmd. 3486, pp. 94, 95.
(f) *Ibid.*, 338.

and be a member of a local authority provided he is otherwise qualified under one of the following three heads :

- (a) he is a local government elector for the area ;
- (b) he is an owner of freehold or leasehold land in the area ;
- (c) he has resided in the area for twelve months preceding the day of election. [716]

(c) *Disqualification for election and holding office*—Sect. 59 (g).—Disqualification applies in the following cases :

- (a) If a person holds any paid office or other place of profit in the gift or disposal of the local authority or of any committee thereof, or
- (b) he has been adjudged bankrupt or made a composition or arrangement with his creditors (subject to certain provisions relating to the cessation of this disqualification), or
- (c) he has within twelve months before the day of election or since his election received poor relief (subject to certain exceptions), or
- (d) he has within five years before his election or since his election been surcharged to an amount exceeding five hundred pounds by a district auditor, the surcharge not having been quashed by the High Court (h), or
- (e) he has been convicted of any offence and ordered to be imprisoned for a period of not less than three months without the option of a fine, or
- (f) he has become disqualified under any enactment relating to corrupt or illegal practices.

(d) *Acceptance of Office*—Sect. 61 (i).—Except for the purpose of taking a declaration, a person elected as chairman or councillor is not permitted to act as such unless he has delivered to the clerk within two months from the day of election a form of declaration of acceptance of office. The office becomes vacant at the expiration of the aforementioned period if the declaration is not made and delivered. The declaration has to be made before either :

- (a) two members of the council, or
- (b) the clerk of the authority, or
- (c) a Justice of the Peace or magistrate, or
- (d) a Commissioner for Oaths, or
- (e) a British Consular Officer. [717]

(e) *Resignation*—Sect. 62 (j).—A person may resign his office at any time by delivering a notice signed by him and delivered to the clerk. The resignation takes effect on the date of the receipt of the notice. [718]

(f) *Failure to attend meetings*—Sect. 63 (k).—Unless the local authority approve for some reason the failure of a member to attend any meeting of that body during a period of six consecutive months he ceases to be a member, provided that if he attends any meeting of a committee or sub-committee of the local authority or of a joint board or other similar body such attendance is reckoned as though it were a meeting of the local authority. Relief from the disqualification may be granted to members of H.M. forces and certain other persons under certain circumstances (l). [719]

(g) 10 Halsbury's Statutes 334.

(i) 10 Halsbury's Statutes 337.

(k) *Ibid.*

(h) L.G.A., 1933, s. 229 (2) ; *ibid.*

(j) *Ibid.*, 338.

(l) L.G.A., 1933, s. 63 (1), proviso (b).

(g) *Vacancies—Casual*—Sects. 64—68 (m).—Provision is made for dealing with vacancies arising from different causes and for the filling thereof. [720]

(h) *Generally*.—By sect. 283 (3) (n) a member has access to the accounts of the authority and of the Treasurer and may make a copy thereof or extract therefrom.

A member may be authorised generally or specifically to institute and carry on proceedings before any court of summary jurisdiction and he shall be entitled to act within that authorisation and may conduct any such proceedings notwithstanding the provisions of the Solicitors Act, 1932 (o) (sect. 277) (p). [721]

Conduct of Elections—Sect. 40 (q).—Elections, polls for which shall be by ballot, are to be conducted in accordance with rules made by the Secretary of State (r) and the following provisions shall apply with the necessary adaptations, alterations and exceptions :

Part IV. of the Municipal Corporations Act, 1882 (s).

Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (except sect. 37) (t).

Municipal Elections (Corrupt and Illegal Practices) Act, 1911 (u).

Second Schedule to L.G.A., 1933 (a). [722]

Meetings and Proceedings.—Parts III. and V., Sched. III., L.G.A., 1933 (b).—Annual meeting to be held each year on or as soon as conveniently may be after April 15 and at least three other meetings for the transaction of general business. Meetings not to be held in licensed premises unless other suitable room is not available either free of charge or at reasonable cost.

The chairman may call a meeting at any time. If the chairman refuses to call a meeting when presented with a requisition signed by five members or one-fourth of the whole number of members, the said members may themselves call a meeting.

Notice of the time and place of meeting to be published at the offices at least *three clear days* before the meeting, and at the same time the clerk must send a summons to the place of residence of every member. Want of service of summons does not affect the validity of a meeting.

The chairman presides at meetings of the council, or if absent, the vice-chairman, or if both absent then a member chosen by those present.

No business to be transacted unless at least one-third of the members are present, no quorum larger than seven to be required.

Mode of voting is by *show of hands* and votes to be recorded on the request of any member.

All acts to be done and all questions decided by a majority of the members *present and voting*.

The person presiding has a second or casting vote in the case of equality of votes.

Names of members present to be recorded.

Minutes of proceedings of local authority or committee to be entered in a book and signed at the same or ensuing meeting by the person presiding thereat.

(m) 26 Halsbury's Statutes 339—343.

(o) 25 Halsbury's Statutes 815.

(q) *Ibid.*, 325.

(s) 10 Halsbury's Statutes 598.

(u) *Ibid.*, 546.

(b) *Ibid.*, 498—501.

(n) *Ibid.*, 455.

(p) 26 Halsbury's Statutes 452.

(r) S.R. & O., 1934, No. 545.

(t) 7 Halsbury's Statutes 511.

(a) 26 Halsbury's Statutes 474.

Standing orders may be made for the regulation of the proceedings and business, and most urban district councils have made such orders from models supplied. The principal matters governed by standing orders are: Order of business; Notices of motion; Rules of debate; Adjournment of meetings; Disorderly conduct; Suspension of sitting; Right of reply; Rescission of preceding resolution; Voting on appointments; Motions affecting persons employed by the council; Motions on expenditure; Admission of the public to meetings; Canvassing of and recommendations by members; Conditions of service; Custody of minute books, deeds, common seal, etc.; Sealing of documents; Inspection of documents; Inspection of land, premises, etc.; Delegation of powers to committees; Financial control; Rate estimates; Ordering of goods, etc.; Receipt and payment of moneys; Contracts. In connection with the latter, sect. 266 of the L.G.A., 1933 (c), provides that all contracts shall be made in accordance with the standing orders which, in the case of contracts for the supply of goods or materials or for the execution of works shall require that notice of the intention to enter into the contract shall be published and tenders invited and regulate the manner in which such notice shall be published and tenders invited. Contracts in the first place should comply with standing orders, an estimate of the probable expense should be presented by the appropriate officer, public advertisements are required to be issued where the contract is likely to exceed a certain amount. A tender other than the lowest if payment is to be made or the highest if payment is to be received is usually not accepted until the council have considered a written report from the appropriate officer. It is usual to have inserted in all written contracts a fair wages clause and stipulations as to sub-letting of contracts.

Sect. 76 of the 1933 Act (d) lays down the procedure to be followed in the case of a member having any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter.

Committees may be appointed for general or special purposes and powers may be delegated. A committee may include *persons who are not members of the local authority* except a committee controlling the finance of the local authority. At least two-thirds of members of every committee shall be members of the council (sect. 85, L.G.A., 1933) (e).

Provision is made in sect. 91 of the 1933 Act (f) for the appointment of joint committees.

Members of local authorities are not to be appointed officers (this disqualification ceases twelve months from the date when a person ceases to be a member) (g). [723]

Functions.—Prior to the passing of the P.H.A., 1936 (h), which consolidated certain enactments relating to public health, this important part of an urban authority's powers and duties was covered by a variety of general and adoptive Acts. A comparison, for example, of the powers transferred to district councils under sect. 27 of the L.G.A., 1894 (i), with the more recent powers exercised by these councils affords some idea of the extent of the growth of local government. Not all urban district councils possess the same powers, population

(c) 26 Halsbury's Statutes 447.

(e) *Ibid.*, 352.

(g) L.G.A., 1933, s. 122; *ibid.*, 371.

(i) 10 Halsbury's Statutes 797.

(d) *Ibid.*, 346.

(f) *Ibid.*, 355.

(h) 29 Halsbury's Statutes 309.

being very often a factor in determining whether such councils possess, for example, the right under the L.G.A., 1929 (*j*), to maintain and repair county roads within their district; other examples are Old Age Pensions, Shops Acts and Road Traffic Acts and Education.

The powers and duties mainly cover Housing; Town Planning; making of Bye-laws; Private Street Works, either under sect. 150 of the P.H.A., 1875 (*k*), or by adoption of the Private Street Works Act, 1892 (*l*); Promotion of and opposition to local bills in Parliament (L.G.A., 1933, sect. 253) (*m*); Education, Elementary and Higher (in certain cases and subject to the provisions of the Education (Local Authorities) Act, 1931) (*n*); Allotments; Advertisement Regulation; Small Dwellings Acquisition; Rent and Mortgage Interest (Restrictions); Food and Drugs (in certain respects and in certain cases); Milk and Dairies; Fire Protection; Provision of Baths and Wash-houses; Markets; Libraries and Museums (in certain cases); Public Parks and Open Spaces; Gas, Water and Electricity; Public Lighting; Cemeteries; Maternity and Child Welfare (in certain cases).

The P.H.A., 1936, previously referred to deals with a number of important functions, the principal being, Sewerage and sewage disposal; Sanitary conveniences (public and private); Removal of refuse; Scavenging; Keeping of animals; Nuisances; Offensive trades; Water supply; Prevention, notification and treatment of infectious disease; Hospitals, Nursing homes, etc.; Child life protection; Common lodging-houses; Canal boats.

In the important matter of public health, sect. 322 of the P.H.A., 1936 (*o*), and sect. 93 of the Food and Drugs Act, 1938 (*oo*), give the Minister of Health wide powers in case of default by the district council in respect of any function under those Acts. Under sect. 307 of the Act of 1936 the county council may contribute towards the expenses of a district council in connection with sewerage and water supply. The district council may relinquish in favour of the county council any public health function.

Under sect. 63 of the L.G.A., 1929 (*p*), and sect. 185 of the P.H.A., 1936 (*pp*), the county council are responsible for making a survey of hospital accommodation for purpose of securing the provision of suitable means for the proper isolation and treatment of persons suffering from infectious disease.

In connection with the maintenance and repair of roads attention is directed to sects. 31 to 36 of the L.G.A., 1929 (*q*), and with regard to town planning it will be observed that district councils may under sect. 43 of the same Act (*r*) relinquish any of their functions under the Town and Country Planning Act in favour of the county council.

District councils possess wide powers in the matter of the acquisition of and dealings in land, sects. 157, 158, 159, 163, 164 and 165 of the 1933 Act (*s*) setting out the powers of acquisition by agreement, acquisition in advance of requirements, compulsory purchase, appropriation, letting, sale or exchange, respectively.

The functions of parish councils may be conferred on district councils on application to the Minister, subject to any necessary modification

(*j*) 10 Halsbury's Statutes 906.

(*l*) 9 Halsbury's Statutes 193 *et seq.*

(*n*) 24 Halsbury's Statutes 173, 174.

(*oo*) 31 Halsbury's Statutes 309.

(*pp*) 29 Halsbury's Statutes 450.

(*r*) *Ibid.*, 915.

(*k*) 13 Halsbury's Statutes 686.

(*m*) 26 Halsbury's Statutes 443.

(*o*) 29 Halsbury's Statutes 525.

(*p*) 10 Halsbury's Statutes 925.

(*q*) 10 Halsbury's Statutes 905 *et seq.*

(*s*) 26 Halsbury's Statutes 391 *et seq.*

(sect. 271, 1933 Act) (t), whilst the county council may delegate to district councils with or without restrictions or conditions any of their functions (with certain exceptions) and the district council thereupon act as agents of the county council (sect. 274, 1933 Act) (u). [724]

Officers and Staff.—The L.G.A., 1933, sect. 107 (a), provides that every district council *shall* appoint fit persons to be clerk of the council, treasurer, surveyor, medical officer of health and sanitary inspector or inspectors, and shall also appoint such other officers as the council think necessary for the efficient discharge of the functions of the council. The council may pay officers such reasonable remuneration as they think fit subject to certain other provisions of the act as regards medical officers and sanitary inspectors.

Subject to reservations as regards certain of the offices, every officer holds his appointment during the pleasure of the council. The terms of his appointment, however, may include a provision that such appointment shall not be terminated by either party without reasonable notice and the Act made this retrospective in its effect on officers holding office under such conditions. This provision regarding the holding of an office during the pleasure of the council does not affect any right or obligation of the officer to retire on superannuation on attaining any specified age or on the happening of any specified event under any enactment or scheme relating to superannuation allowances. The Royal Commission on Local Government in paras. 464, 465 and 466 of the Final Report (b) referred to the case of *Brown v. Dagenham U.D.C.* and the effect of the judgment given in the King's Bench Division on February 22, 1929 (c). The Commission in para. 471 recommended an amendment of the then existing law, and effect was given to this in the 1933 Act.

The offices of clerk of the council and treasurer shall not be held by :

- (a) the same person, or
- (b) by persons related to one another as partners, or
- (c) by persons related to one another as employer and employee.

Sect. 123 of the L.G.A., 1933 (d), applies to officers, the principles to be observed with regard to interest in contracts as if they are members of a local authority.

Standing deputies may be appointed for the offices set out in sect. 107 of the 1933 Act (e) previously referred to. Such deputies when acting in place of the holder of the office have all the functions of the holder of the office and they hold their office as deputies during the pleasure of the council. Deputies to the medical officer of health and sanitary inspector shall not be appointed without the consent of the Minister (sect. 115).

Temporary deputies may also be appointed for the offices to which reference has been made and conditions similar to those attached to standing deputies apply in these cases (sect. 116).

Security for the faithful execution of his office must be given by every officer entrusted with the control of money or shall be taken out

(t) 26 Halsbury's Statutes 450.

(a) *Ibid.*, 362.

(c) [1929] 1 K. B. 737 ; 93 J. P. 147.

(e) *Ibid.*, 362.

(u) *Ibid.*, 451.

(b) Cmd. 3436, pp. 144—145.

(d) 26 Halsbury's Statutes 371.

by the local authority, and they may require any other officer to give security or themselves take security. Such security shall be produced to the district auditor and the cost is usually defrayed by the council.

In regard to medical officers of health and sanitary inspectors, regulations have been made prescribing the qualifications to be held, the duties to be performed, the mode of appointment, the tenure of office, salary, etc. Sect. 109 of the 1933 Act (f) provides for the payment by the county council towards the salary of the medical officer and sanitary inspectors. Where a medical officer is restricted from engaging in private practice as a medical practitioner and where more than one sanitary inspector is appointed, the senior sanitary inspector is required to devote the whole of his time to the duties of his office. These officers shall not be appointed for a limited time only and shall not be dismissed by the council without the consent of the Minister or by the Minister. A vacancy in either of these offices shall be filled within six months after its occurrence or within such longer time as the Minister may permit. County councils have power to make arrangements for the combination of districts so that medical officers do not engage in private practice, and, where advantageous, districts can be united by order of the Minister for the purpose of appointing a medical officer.

Sect. 120 of the L.G.A., 1933 (g), requires every officer to account for all money and property committed to his charge.

A paid officer of a local authority who is employed under the direction of a committee or sub-committee of the authority, any member of which is appointed on the nomination of some other local authority, shall be disqualified for being elected or being a member of that other local authority (sect. 59 (2)).

Any officer may be authorised either generally or specifically to institute and carry on proceedings before any court of summary jurisdiction and he shall be entitled to act within that authorisation and may conduct any such proceedings (h). [725]

Miscellaneous. *Returns, etc.*—An urban council is required by statute to make reports and returns and furnish information to the Minister as he may require (1933 Act, sect. 284) (i). [726]

Offices and Buildings.—By sect. 125 of the L.G.A., 1933 (k), the council may acquire or provide and furnish halls, offices and other buildings *whether within or without the area* to be used for the purpose of transacting the business of the authority and for public meetings and assemblies. [727]

Conferences.—Sect. 267 of the 1933 Act (l) provides for payment of reasonable expenses of members and officers in attending conferences or meetings and reports thereof may be purchased. [728]

Gifts.—An urban authority may accept, hold and administer any gift of property for any local public purpose and may execute works thereto (L.G.A., 1933, sect. 268) (m). [729]

Inspection of Documents.—By sect. 283 of the 1933 Act (n), a local

(f) 26 Halsbury's Statutes 364.

(g) *Ibid.*, 370.

(h) L.G.A., 1933, s. 277; 26 Halsbury's Statutes 452, and Solicitors Act, 1932, s. 79; 25 Halsbury's Statutes 832.

(i) 26 Halsbury's Statutes 456.

(k) *Ibid.*, 372.

(l) *Ibid.*, 448.

(m) *Ibid.*, 449.

(n) *Ibid.*, 455.

government elector may inspect minutes of proceedings of the council on payment of a prescribed fee and copies thereof and extracts therefrom may be made. He may also inspect, make copies of or extracts from orders for payment of money. The abstract of accounts, etc., are open to inspection of an elector who may make copies or take extracts therefrom; copies of the same *shall* be delivered on payment by an elector of a reasonable sum for each copy. Penalties are prescribed in the case of obstruction of any person entitled to inspect, etc. (o).
[730]

Financial.—An urban authority has power to levy rates (p) to meet all expenses which are met out of the general rate fund and all receipts are carried to this fund (q). With the consent of the sanctioning authority the council may borrow for any statutory purpose such as acquisition of land, erection of buildings and execution of permanent work, etc., the cost of which should be spread over a term of years (r). All moneys borrowed are chargeable indifferently on all revenues of the authority. The accounts of the council and the officers are made up yearly to March 31, are subject to audit by the district auditor, must be deposited at the offices of the authority and shall be open at all reasonable hours for seven clear days before the audit (s), during which time all interested persons may inspect such accounts and deposited documents and copies thereof or extracts therefrom may be taken without payment. Penalties are prescribed in the case of officers neglecting to make up accounts, or who alter accounts or books after the same have been made up and deposited. This also applies to any officer who refuses to allow inspection.

With regard to the audit of the accounts :

- (a) Notice must be inserted in a local newspaper at least fourteen days before deposit of accounts.
- (b) Local government electors or their representatives may attend the audit and may raise objection to the accounts.
- (c) The auditor must report on the accounts within fourteen days of the completion of the audit.
- (d) The auditor has power to disallow and to surcharge (t). **[731]**

(o) See title INSPECTION OF DOCUMENTS.

(p) L.G.A., 1933, s. 189.

(q) *Ibid.*, s. 188.

(r) *Ibid.*, s. 195.

(s) *R. v. Bedwellty U.D.C., Ex parte Price*, [1934] 1 K. B. 333 ; 98 J. P. 25 ; Digest Supp.

(t) For fuller treatment of the topics under the sub-heading *Financial*, see the notes to Parts VIII., IX. and X. of the Act of 1933, in Lumley's Public Health (11th ed.), pp. 1007 *et seq.*

URBAN DISTRICT COUNCIL ACCOUNTS

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General Rate Fund Account.—All receipts of an U.D.C. must be carried to the general rate fund of the district and all liabilities discharged out of that fund. An account called the “general rate fund account” must be kept of all receipts carried to and payments made out of the general rate fund, but where receipts are for the benefit of, or payments are chargeable to, a part only of the district, a separate account must be kept of any such receipts and payments in respect of that part of the district (a).

The above requirements can be met by an analysis of receipts and payments in a cash book, but present-day practice is to prepare full “revenue accounts” of income and expenditure by bringing into account outstanding creditors at the end of the financial year as regards expenditure and by bringing income into account as and when it becomes due irrespective of the date of receipt.

One revenue account is usually prepared in respect of income and expenditure common to the whole district, arranged to show the income and expenditure in respect of each of the various services carried out and grand totals of income and expenditure on all services. It is not uncommon, however, to prepare separate revenue accounts in respect of such services as private street works, education, public baths, and libraries, transferring the surplus or deficiency on these to the main revenue account.

A separate housing revenue account must be prepared (b) and separate revenue accounts are also necessary for trading undertakings such as gas, water, electricity, and transport, although under the provisions of the L.G.A., 1933, these are all subsidiary accounts of the general rate fund revenue account, and surpluses and deficiencies are transferred thereto within the limits prescribed by statute.

Separate accounts distinct from the general rate fund accounts are necessary in respect of superannuation funds, trusts and charities.

(a) L.G.A., 1933, s. 188.

(b) Housing Act, 1936, s. 128.

Where there are items of income or expenditure in respect of parts only of the district, the difference between expenditure and income in respect of services common to the whole district is apportioned to the parts of the district in proportion to the product of a rate of one penny in the pound in each, and is transferred to separate revenue accounts for each part, these revenue accounts being debited or credited with the special expenditure or income applicable to them and credited with the net product of the rate levied for local services in the areas in respect of which they are prepared.

The accounts must necessarily be in such a form as will readily provide the information required to complete the financial returns referred to later. [732]

Power of M. of H. to make Regulations.—As the accounts of U.D.Cs. are subject to district audit (c) the M. of H. may make regulations with respect to the preparation of their accounts (d).

The following orders dealing with accounts have been made under sect. 5 of the District Auditors Act, 1879 (e), and apply to U.D.Cs. :—

- (1) Housing Accounts Order (Local Authorities), 1920.
- (2) Financial Statements (District Audit) Regulations, 1938 (f).
- (3) Accounts (Payment into Bank) Order, 1922.
- (4) Rate Accounts (Borough and U.D.Cs.) Order, 1926. [733]

The Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930, are not applied compulsorily to U.D.Cs., but the fact that they set out the views of the M. of H. with regard to local authorities' accounts and must be observed by boroughs in accounts subject to district audit has led to their general adoption by U.D.Cs. as a basis of the organisation of their accounts. See title BOROUGH ACCOUNTS. [734]

Date to which Accounts to be made up.—The accounts of U.D.Cs. are to be made up yearly to March 31 or such other date as the M. of H. may either generally or in any special case direct (g). [735]

Organisation of Accounts and Published Abstract.—From the point of view of accounting principles there is no basis for differentiation between the transactions of different classes of local authority. Statutory regulations must of course be observed and, whilst they may have some regard to *volume* of transactions, these are more generally based on the legal constitution of the particular class of authority and the requirements of the district auditor.

The purpose of all accounting being to afford information as to the financial effect of transactions, with a view to efficient administration, it follows that a minimum compliance with statutory regulations may not be adequate to the needs of a large and important urban district.

The form and organisation of the accounts of such authorities frequently approximate to those of a municipal borough and the published abstract of accounts gives much more information than the statutory epitome of accounts which satisfies the audit regulations in that

(c) L.G.A., 1933, s. 219.

(d) *Ibid.*, s. 235.

(e) 10 Halsbury's Statutes 573.

(f) S.R. & O., 1933, No. 794, made under L.G.A., 1933, s. 222; 26 Halsbury's Statutes 426.

(g) L.G.A., 1933, s. 223; 26 Halsbury's Statutes 427.

regard. Except in the smaller authorities the accounts are full accounts of Income and Expenditure (see title ACCOUNTS OF LOCAL AUTHORITIES).

A standard form of published abstract of accounts has been issued by the Institute of Municipal Treasurers and Accountants, and this is readily adaptable to the requirements of an U.D.C. [736]

URBAN DISTRICT COUNCIL, CHAIRMAN OF

See CHAIRMAN OF URBAN DISTRICT COUNCIL.

URBAN DISTRICT COUNCIL, CLERK TO

See CLERK TO URBAN DISTRICT COUNCIL.

URBAN DISTRICT COUNCIL, SURVEYOR TO

See SURVEYOR OF DISTRICT COUNCILS.

URBAN DISTRICT COUNCILLOR

See DISTRICT COUNCILLOR.

URBAN DISTRICT COUNCILS ASSOCIATION

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Formation, Functions and Membership.—The Association was formed as the Local Boards Association on June 15, 1890, and it was re-named the Urban District Councils Association after the passing of the L.G.A., 1894, under which urban district councils were constituted.

The object of the Association, as stated in Rule 2, is by complete organisation more effectually to watch over and protect the interests, rights and privileges of urban district councils as they may be affected by public bill legislation or by private bill legislation of general application to urban districts, or by Orders in Council or by Government departments, and in other respects to take action in relation to any other subjects in which urban district councils may generally be interested, and to promote such measures as may from time to time be advisable.

In the year 1939, every U.D.C. in England was a member of the Association, and also every U.D.C. in Wales with the exception of three. [737]

Expenses.—The expenses of the Association are defrayed by way of subscription to the Official Circular of the Association—which is issued to every member. The rate of subscription varies from 2 guineas per annum for councils of districts with a population not exceeding 3,000 to 5 guineas per annum for councils of districts with a population exceeding 20,000. [738]

Local Associations.—Certain provincial Associations of Urban District Councils, namely Cheshire, Derbyshire, Durham, Glamorgan, Hertfordshire, Lancashire, Leicestershire, Middlesex, Monmouthshire, Staffordshire and the West Riding of Yorkshire are formally affiliated to the Association. [739]

Recognition by Parliament and Government Departments.—In connection with all public enactments which require Government departments to consult associations of local authorities before making orders or regulations, the Association is invariably consulted by Government departments, as representing the interests of urban district councils in England and Wales. [740]

Executive Council.—The management of the affairs of the Association is entrusted to the executive council, consisting of the president,

eighteen vice-presidents (being members of either House of Parliament who are interested in local government), an honorary treasurer, and one representative from each of twenty-one urban district councils, elected by the members, as to one-third of the number every year. There is provision for the representation on the executive council of each of nine regions, into which England and Wales have been divided for the purposes of the election. [741]

Annual Conference.—The annual meeting of the Association, and a conference of urban district councils, is held on the fourth Wednesday in the month of June, and the two following days, at a place selected by the members. [742]

Representation of the Association on Other Bodies.—The Association appoints representatives to serve on a number of bodies permanently established under statutory provisions or departmental order, including the Central Valuation Committee, the Railway Assessment Authority, the Standing Advisory Committee on Public Health, the Advisory Committee on River Pollution, the Advisory Committee on Town and Country Planning, the Advisory Committee on Medical Officers' Salaries, the Advisory Committee on Building Bye-laws, the Central Water Advisory Committee, the Livestock Advisory Committee, the Central Advisory Committee on the Qualifications, etc., of Local Government Officers, the National Joint Industrial Council for Local Authorities' Non-trading Services Manual Workers, the Royal Sanitary Institute and Sanitary Inspectors' Examination Board, the National Playing Fields Association, the Central Council for Health Education, the Travel and Industrial Development Association, the Council for the Preservation of Rural England, the Allotments Advisory Committee, the Advisory Committee on Street Collections in the Metropolitan Police Area; and from time to time in response to invitations by Government Departments it nominates representatives for appointment on Departmental Committees. [743]

Offices.—The offices of the Association are at Palace Chambers, Bridge Street, Westminster, S.W.1. The Secretary is A. J. Lees, Esq. O.B.E. [744]

URBAN DISTRICT, MEDICAL OFFICER OF HEALTH

See MEDICAL OFFICER OF HEALTH.

VACANCY, CASUAL

See CASUAL VACANCY.

VACCINATION

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General.—The law relating to vaccination has surrounded the subject with a mass of detail unequalled by any other matter of comparable importance in the whole field of public health legislation. The original object of the law governing vaccination was the enforcement of the operation upon every child by compulsion; and although amending legislation has resulted in compulsion becoming no more than nominal, the old detailed procedure remains; with the result that the administration of the Vaccination Acts entails the maintenance of cumbersome and expensive machinery which largely fails to effect the purpose for which it was created. During the five years 1931–1935, the last for which figures are available, fewer than 40 per cent. of all children born in England and Wales were vaccinated, and this figure may be taken as a measure of the efficiency of the powers of enforcing vaccination.

The law relating to vaccination is contained in the Vaccination Acts of 1867, 1871, 1874, 1893 and 1907 (*a*), and the Vaccination Order, 1930 (*b*). These Acts and the orders in force were formerly administered by board of guardians, but since April 1, 1930, the duty of carrying them into effect has devolved upon councils of counties and county boroughs (*c*), and in London upon the Common Council of the City of London and the councils of the metropolitan boroughs (*d*) (hereinafter referred to as “councils”). Although formerly vaccination of a person by a public vaccinator was not deemed to constitute relief (*e*), the L.G.A. of 1929 entirely severed the public performance of vaccination from any connection with the Poor Law (*f*). [745]

Functions of County and County Borough Councils.—Every council is required to divide its area into vaccination districts as may be approved by the M. of H., and in respect of each such district to enter into a contract with a registered medical practitioner for the performance of vaccination of all persons resident within the district, such practitioner being termed the public vaccinator of the district (*g*). No contract for vaccination is valid until approved by the M. of H. (*h*), and any alteration in the boundaries of a vaccination district is subject

(*a*) 13 Halsbury's Statutes 609, 618, 623, 875, 910.

(*b*) S.R. & O., 1930, No. 2.

(*c*) L.G.A., 1929, s. 1; 10 Halsbury's Statutes 883.

(*d*) *Ibid.*, s. 18 (*g*); *ibid.*, 895.

(*e*) Vaccination Act, 1867, s. 26; 13 Halsbury's Statutes 615.

(*f*) L.G.A., 1929, s. 2 (*b*); 10 Halsbury's Statutes 883.

(*g*) Vaccination Act, 1867, ss. 2 and 3; 13 Halsbury's Statutes 609.

(*h*) *Ibid.*, s. 9; *ibid.*, 611.

to the approval of the M. of H. (*i*) and must be advertised by public notice in the district, as must any other alteration in the local arrangements for vaccination (*k*) (*e.g.* change in the public vaccinator).

As a matter of administrative convenience it has been the practice for councils to constitute poor law institutions and children's homes as separate vaccination districts, and to enter into contracts with the medical officers of the institutions or homes for the performance of vaccination of the inmates (*l*).

A council is also required to appoint one or more vaccination officers (*m*) to carry out the duties of registrar of vaccination. The area allotted to a vaccination officer must coincide with one or more vaccination districts or with one or more districts of a registrar of births and deaths. As a point of administrative practice it is a great convenience to combine in the same individual the offices of vaccination officer and registrar of births and deaths.

In the event of a serious risk of outbreak of smallpox, the M. of H. may require a council to provide special vaccination stations (*n*) in order to enable the population to be protected by vaccination with as little delay as possible. [746]

Duties of Parent.—It is the duty of the parent, or other person having the custody of any child born in England or Wales, to cause such child to be vaccinated (*o*) within six months of birth (*p*) by a medical practitioner, and if the operation is unsuccessful, to cause it forthwith to be performed again. A parent who, without reasonable excuse, neglects to have his child vaccinated, is liable to proceedings in a court of summary jurisdiction and on conviction to a fine not exceeding twenty shillings (*q*). After conviction no further proceedings may be taken to enforce vaccination until the child is four years old (*r*).

The above general statement of a parent's obligations is subject to the following exceptions :

- (i.) The operation may be postponed by a certificate from a medical practitioner that in his opinion a child is not in a fit state to be successfully vaccinated. Such certificate is valid for two months and may be renewed for any number of successive periods of two months each (*s*).
- (ii.) If any medical practitioner certifies that a child has had smallpox, or that he has unsuccessfully vaccinated it three times and it is insusceptible to vaccination, there is thenceforth no further obligation on the parent under the Acts (*t*).
- (iii.) If a parent or other person having the custody of a child, within four months of its birth, makes a statutory declaration that he conscientiously believes that vaccination would be prejudicial to the child's health, and within seven days delivers the declaration to the vaccination officer of the

(i) Vaccination Act, 1867, s. 3 ; 13 Halsbury's Statutes 609.

(k) *Ibid.*, s. 13 ; *ibid.*, 612.

(l) See Vaccination Order, 1930, S.R. & O., 1930, No. 2, para. 6.

(m) Vaccination Act, 1871, s. 5 ; 13 Halsbury's Statutes 618.

(n) Vaccination Act, 1898, s. 7 ; *ibid.*, 877.

(o) Vaccination Act, 1867, s. 16 ; *ibid.*, 612.

(p) Vaccination Act, 1898, s. 1 (1) ; *ibid.*, 875.

(q) Vaccination Act, 1867, s. 29 ; *ibid.*, 616.

(r) Vaccination Act, 1898, s. 4 ; *ibid.*, 877.

(s) Vaccination Act, 1867, s. 18 ; *ibid.*, 613

(t) *Ibid.*, s. 20 ; *ibid.*

district, he is exempt from any penalty under the Act (*u*). The declaration, which may be made before a commissioner for oaths or a justice of the peace, is exempt from stamp duty (*a*), and the person making it is not required to adduce any reasons in support of his objection to vaccination.

The effect of this provision is virtually to abolish the compulsory element in the vaccination laws. During the years 1931–1935, statutory declarations were made in respect of 45 per cent. of all children born in this country (*b*). [747]

The Vaccination Officer.—At the time the birth of a child is registered, the registrar of births and deaths gives the parent a printed statement as to the requirements of the Vaccination Acts (*c*) and setting out the names and addresses of the public vaccinator and of the vaccination officer of the district. Each month the registrar of births and deaths sends to the vaccination officer a list of the births registered by him and of deaths of infants below the age of twelve months (*d*). The vaccination officer enters in the appropriate columns (headed "Vaccination Register") of the "Monthly birth lists" the vaccinal particulars, as ascertained by him, of the infants named therein. These "monthly lists" are retained by the vaccination officer and are from time to time bound together, constituting the vaccination register (*e*).

If, at the expiration of 3 months and 7 days from the date of birth a vaccination officer has not received a certificate of successful vaccination, of postponement, of insusceptibility, or a statutory declaration, he sends to the parent a reminder of his obligations and an inquiry as to whether vaccination has taken place (form Q) (*e*). If one of the above certificates or a declaration has not been received by the vaccination officer after the expiration of four months from the date of birth, the vaccination officer sends information of the case to the public vaccinator on a weekly list (form H) (*e*) in order that the latter may offer to vaccinate the child. At the expiration of 6 months and 7 days from the date of birth, if no certificate or valid declaration has been received, the vaccination officer gives the parent a final warning on form K (*e*), and if this is not complied with it is his duty under the Act, without specific instructions from the council, to institute proceedings (*f*). In view, however, of the difficulty in obtaining a conviction or the infliction of an adequate penalty, and the uselessness of the formal enforcement of a law largely rendered nugatory by the conscientious objection clause above referred to, prosecutions are now rare.

If an unvaccinated child removes from his district, it is the duty of the vaccination officer to endeavour to trace its destination and inform the vaccination officer of the district to which it has removed in order that the latter may take the necessary steps to secure vaccination (*g*).

A vaccination officer has security of tenure in that a council may not determine his appointment, or make any alteration in his district, or

(*u*) Vaccination Act, 1907, s. 1 (1); 13 Halsbury's Statutes 910.

(*a*) *Ibid.*, s. 1 (2); *ibid.*

(*b*) Annual Report of Chief Medical Officer of the M. of H., 1936, p. 250.

(*c*) Vaccination Act, 1867, s. 15; 13 Halsbury's Statutes 612.

(*d*) Vaccination Act, 1871, s. 8; *ibid.*, 620.

(*e*) Vaccination Order, 1930; S.R. & O., 1930, No. 2; Schedules IV., V.

(*f*) See *Bramble v. Lowe*, [1897] 1 Q. B. 283; 38 Digest 203, 388.

(*g*) Vaccination Order, 1930; S.R. & O., 1930, No. 2, Schedule IV.

reduce his remuneration, without the consent of the M. of H. (*h*). He may be paid a fixed salary or by fees in accordance with the scale laid down in the Vaccination Order, 1930. In addition to his clerical duties he may be required by the council, on an outbreak of smallpox, to make house to house visits to urge the desirability of vaccination or re-vaccination (*i*). [748]

The Public Vaccinator must be a registered medical practitioner in possession of a certificate of proficiency in vaccination (*k*). (Most examining bodies, granting a registrable medical qualification, require the possession of such a certificate as a condition of granting a degree or diploma, and the possession of such a degree or diploma is held to be evidence of proficiency in vaccination.) It is the duty of a public vaccinator to vaccinate or re-vaccinate on request and free of charge (*l*) any person resident in his district.

Within four weeks either of a request from a parent or the receipt of form H (*m*) from a vaccination officer, it is the duty of a public vaccinator to visit the home of the child for the purpose of offering vaccination. At least twenty-four hours' notice of his intention to visit the home must be given and the visit must be made between the hours of 9.0 a.m. and 4.0 p.m. unless the parent otherwise agrees (*n*). Between the sixth and fourteenth day after vaccination he must revisit to ascertain the result of the operation (*o*) and, if successful, must complete a certificate and forward it directly to the vaccination officer (*p*). (Note : If vaccination is performed by a medical practitioner other than the public vaccinator, the duty of sending the certificate to the vaccination officer devolves upon the parent (*q*).) He must return form H, duly completed, to the vaccination officer within six weeks of its receipt, and must enter particulars of every vaccination performed by him, in a vaccination register.

In every stage of the operation of vaccination a public vaccinator must observe aseptic precautions, he may use only glycerinated calf-lymph (or such other lymph as may be issued by the M. of H.) and he must keep such record of every tube of lymph he uses as will enable its origin to be identified. A tube of lymph once opened must not be kept for vaccinating on a future occasion (*r*).

As a result of the occurrence of a number of cases of post-vaccinal encephalitis (*s*) in the years immediately before 1928, instructions were given to public vaccinators by the M. of H. in 1929 (*t*) that vaccination should be performed by a single linear incision or scratch not more than a quarter of an inch long and merely through the epidermis, in order to cause the minimum of injury to the tissues. Only in those special circumstances where maximum protection against smallpox is desired (*e.g.* after exposure to infection of the disease) is it considered

(*h*) Vaccination Order, 1930 ; S.R. & O., 1930, No. 2, paras. 13—15.

(*i*) *Ibid.*, Sched. IV.

(*k*) *Ibid.*, para. 4.

(*l*) Vaccination Act, 1867, s. 22 ; 13 Halsbury's Statutes 614.

(*m*) See the Vaccination Officer, *ante*, p. 327.

(*n*) Vaccination Order, 1930 ; S.R. & O., 1930, No. 2, para. 8.

(*o*) *Ibid.*, Sched. I.

(*p*) Vaccination Act, 1867, s. 21 ; 13 Halsbury's Statutes 614.

(*q*) Vaccination Act, 1871, s. 7 ; *ibid.*, 619.

(*r*) Vaccination Order, 1930 ; S.R. & O., 1930, No. 2 ; Sched. III.

(*s*) Report of the Committee on Vaccination, 1928, Cmd. 3148, H.M.S.O.

(*t*) Vaccination Order, 1929 ; S.R. & O., 1929, No. 640 (revoked ; see now Vaccination Order, 1930 ; S.R. & O., 1930, No. 2, Sched. III.).

justifiable to increase the number of linear incisions up to four, and these should be so placed as to avoid coalescence of the resulting vesicles.

Except to afford protection against immediate danger of smallpox, a public vaccinator must only vaccinate persons in good health and, in the case of infants, should, by certificate, postpone vaccination if the child is suffering from any illness, particularly any disease of the skin, or if the conditions of the home or prevalence of infectious disease, in his opinion, render the operation unsafe. If vaccination is postponed for either of the two last-named reasons, the public vaccinator must notify the M.O.H. (*u*).

A contract between the council and a public vaccinator must be in the approved form (*a*) (with such modification as may be agreed by the parties and approved by the M. of H.) and must provide for the payment of the public vaccinator in accordance with a scale of fees, the minima of which are set out in the order (*b*). The contract is determinable by either party on twenty-eight days' notice. In addition to the remuneration specified in the contract, a public vaccinator is subject to payment of an "award" at a rate not exceeding one shilling for every successful primary vaccination performed by him (*c*). This payment is made by the council on certificates issued by the M. of H., based upon reports from officers of the Ministry as to the quality and number of vaccinations performed and the accuracy of the records of the public vaccinator.

A public vaccinator is not entitled to a fee for vaccinating or re-vaccinating a person not resident in his district (*d*). It sometimes happens, however, that in order to prevent an outbreak of smallpox, it is desirable that a public vaccinator should visit a factory, or other place where a smallpox patient has been employed, in order to offer vaccination to contacts, irrespective of their place of residence. In these circumstances the customary administrative practice is for the council to make application to the M. of H. under the L.G.A., 1933, for approval to pay to the public vaccinator an appropriate fee for his services (*e*).

A M.O.H. or assistant M.O.H. may vaccinate without charge any contact to a case of smallpox, who is willing to be vaccinated (*f*). He must keep a record of every vaccination performed by him, with particulars as to the source of the lymph used. [749]

London.—Under the L.G.A., 1929, sect. 18 (*g*), functions of boards of guardians in London in respect of vaccination were transferred to metropolitan borough councils and the City corporation; the L.C.C. has no functions as to vaccination (sect. 2 does not apply).

Metropolitan borough councils, besides appointing public vaccinators for vaccination districts, contract for public vaccination in public assistance institutions in their respective boroughs. The M. of H. before approving these arrangements advises that the concurrence of the L.C.C. as public assistance authority should be obtained. In practice the medical officer of the institution is generally appointed public vaccinator. Some metropolitan borough councils have appointed

(*u*) Vaccination Act, 1898, s. 1 (*4*); 13 Halsbury's Statutes 876.

(*a*) Vaccination Order, 1930; S.R. & O., 1930, No. 2, Sched. I.

(*b*) *Ibid.*, para. 5.

(*c*) Vaccination Act, 1867, s. 5; 13 Halsbury's Statutes 610.

(*d*) *Ibid.*, s. 11; *ibid.*, 612.

(*e*) L.G.A., 1933, s. 223 (1), proviso; 26 Halsbury's Statutes 429.

(*f*) Public Health (Smallpox Prevention) Regulations, 1917; S.R. & O., 1917, No. 146.

as vaccination officer a member of the public health staff and use the health visitors to assist; in other instances the borough M.O.H. has been appointed vaccination officer.

As to provisions relating to superannuation of vaccination officers in London, see L.C.C. (General Powers) Act, 1934, Part VII. [750]

VAGRANCY

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See also titles : CASUALS ;
POOR LAW OFFENCES ;
TENTS, SHEDS, VANS.

Preliminary Observations.—The existing law on this subject is contained mainly in the Vagrancy Act, 1824 (*a*), and the Children and Young Persons Act, 1933 (*b*).

The term “vagrant” applies chiefly to destitute wayfarers and wanderers applying for or receiving relief (*c*), who are then dealt with as casual poor persons (*d*).

Various types of offences under the Act of 1824 cause a person to be liable to punishment as an idle and disorderly person (*e*). One of these offences is committed by a person wandering at large and placing himself in any public place to beg or gather alms or causing or procuring or encouraging children so to do. If such a person is seeking assistance under exceptional circumstances he is not a vagrant within this section provided that it is not his habit or mode of life and that the begging is not for an unlawful object or done disorderly (*f*). Every person committing any of the offences for which the offender is to be deemed an idle and disorderly person, having been previously convicted as an idle and disorderly person, is deemed to be a rogue and vagabond (*f*). [751]

Lodging in Outhouses, etc.—Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air or under a tent, or in any cart or wagon, and not giving a good account of himself or herself is deemed to be a rogue and vagabond (sect. 4), provided it is proved either :

- (a) that in relation to the occasion on which he lodged he had been directed to a reasonably accessible place of shelter and failed to apply for, or refused, accommodation ; or

(a) 12 Halsbury's Statutes 913. For fuller treatment than is here appropriate, see Stone's Justices' Manual, under the title VAGRANTS.

(b) 26 Halsbury's Statutes 168.

(c) Poor Law Act, 1930, s. 163 (*f*) ; 20 Halsbury's Statutes 1047.

(d) See title CASUALS.

(e) Vagrancy Act, 1824, s. 3 ; 12 Halsbury's Statutes 913.

(f) *Pointon v. Hill* (1884), 12 Q. B. D. 306 ; 48 J. P. 342.

- (b) that he is a person who persistently wanders abroad and, notwithstanding that a place of shelter is reasonably accessible, lodges or attempts to lodge as aforesaid; or
- (c) that by, or in the course of, lodging as aforesaid, he caused damage to property, infection with vermin, or other offensive consequence, or that he lodged as aforesaid in such circumstances as would appear to be likely so to do.

The term "a place of shelter" means a place where provision is regularly made for giving free of charge accommodation for the night to such persons as apply therefor. (Vagrancy Act, 1935, s. 1 (g).) [752]

Nuisances.—It is an offence for any hawker, gipsy or other person travelling on a highway to pitch any booth, stall or stand or encamp upon any part of the highway. (Highway Act, 1835, s. 72.)

A gipsy encampment may in certain circumstances be a nuisance and an injunction will be granted against the owner of the land restraining him from allowing his land to be used for such a purpose (h). [753]

The Education of Vagrant Children.—If a person habitually wanders from place to place and takes with him any child who has attained the age of five years, he shall, unless he proves that the child is totally exempted from school attendance or that the child is not, by being so taken with him, prevented from receiving efficient elementary education, be liable on summary conviction to a fine not exceeding with costs 20s. (i). This provision does not apply to a child in a canal boat, for whose education provision is made under sect. 50 of the Education Act, 1921 (k).

Any constable who finds a person wandering from place to place and taking a child with him may, if he has reasonable ground for believing that the person is guilty of an offence under this provision, apprehend him without a warrant and may take the child to a place of safety (l).

Without prejudice to the requirements of the Education Act, 1921, as to school attendance, or to proceedings thereunder, the above provisions do not, during the months of April to September inclusive, apply to any child whose parent or guardian is engaged in a trade or business of such a nature as to require him to travel from place to place, if a certificate has been obtained that the child has made not less than 200 attendances at a public elementary school during the months of October to March immediately preceding (m). [754]

Common Lodging Houses.—Provision is made in sect. 241 of the P.H.A., 1936 (n), for the general management and control of common lodging-houses. In particular the local authority may require the keeper of a common lodging-house in which beggars or vagrants are admitted, to report daily to them, or to such persons as they may direct, every lodger who resorted to the house during the preceding day or night, on schedules to be supplied to him by the local authority for this purpose. [754a]

(g) 28 Halsbury's Statutes 179.

(h) *A.-G. v. Stone* (1895) 60 J. P. 168.

(i) Children and Young Persons Act, 1933, s. 10 (1); 28 Halsbury's Statutes 177.

(k) 7 Halsbury's Statutes 158.

(l) Children and Young Persons Act, 1933, s. 10 (2). As to the power of juvenile courts to deal with such children, see ss. 61—63.

(m) *Ibid.*, s. 10 (3). The Board of Education have power to make regulations as to the issue of such certificates (s. 10 (4)).

(n) 29 Halsbury's Statutes 249.

VALUATION LIST

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See also titles :

ASSESSMENT COMMITTEES ;	VALUATIONS FOR RATING ;
RATING OF SPECIAL PROPERTIES ;	VALUER.

The valuation list is the foundation on which the rating system rests. In it there should be found particulars of every hereditament in the area for which it is made, and the value, if it is rateable (a). Where any hereditament, which ought to be entered, is omitted, the list is not complete and is open to objection (b). The only exception is that agricultural land and buildings (other than dwelling-houses) which are exempted from rates, are not to be included in the list (c).

The list is the basis on which rates are made, and no rate may be levied on any hereditament which is not entered in it, nor may it be charged on a value different from that in the list (d).

The valuation list is also to be accepted as conclusive evidence for the purpose of determining the annual value of premises under the Licensing (Consolidation) Act, 1910 (e), and under enactments relating to the qualifications of a manager of a school or asylum district, or of a juror (f).

As the term "hereditament" is defined as meaning "any lands, tenements, hereditaments or property which are or may become liable to any rate" (g), it appears clear that empty property is to be entered in the list, including new property ready for occupation but empty. [755]

Hereditament : when Separately Rateable.—For the purposes of the rate, any premises or other property separately assessed for the purposes of the valuation list is a hereditament, and may not be divided except

(a) R. & V.A., 1925, s. 21 (1); 14 Halsbury's Statutes 645.

(b) *Ibid.*, ss. 26 (1), 37 (1); *ibid.*, 653, 664.

(c) L.G.A., 1929, s. 67; 10 Halsbury's Statutes 927.

(d) R. & V.A., 1925, s. 20 (1); 14 Halsbury's Statutes 645. "Rate" here has the meaning as defined, in s. 68 (1); 14 Halsbury's Statutes 686, i.e. a public rate, levied on the annual value of property.

(e) 9 Halsbury's Statutes 985.

(f) R. & V.A., 1925, s. 20; 14 Halsbury's Statutes 645.

(g) *Ibid.*, s. 68; *ibid.*, 686.

by amendment of the list, since the value appearing in the list is conclusive for the purposes of the rate (*h*).

Whether several buildings in a single occupation are assessed as one hereditament, or are assessed separately, may affect materially the interests of the occupier. If one of the buildings should become empty, no allowance from the rates will be made if the building forms part only of one hereditament; but if it is assessed separately, and is empty, rates will not be payable.

Under the derating Acts it may be either an advantage or a disadvantage for the occupier to have the whole of his premises assessed as one. If one of the buildings forming part of his premises is a factory or workshop, that part will be industrial, and entitled to relief; but if it is one of several buildings assessed together as one, and the purpose of the occupation and use of the premises considered as a whole is primarily non-industrial, no allowance will be made for the minor part used as a factory. If the building used as a factory is separately assessed, it will be entitled to relief as an industrial hereditament.

On the other hand, if most of the buildings are used for factory purposes, and one or more, a minor part of the whole premises, are used for purposes not those of a factory, it will be an advantage to the occupier if the whole of the buildings are included in one assessment, as he will then get a deduction from the non-industrial part equal to 10 per cent. of the industrial (*i*). If the non-industrial parts are assessed separately he will not get such an allowance as only those parts can be aggregated which are used as parts of the factory (*k*).

Whether premises should be assessed as one, or in separate parts, depends on the facts in each case. It is, however, essential in the first place that premises to be separately rateable must be capable of separate occupation; and whether premises are actually separately occupied depends on whether the person using the premises has the right to the exclusive occupation of them (*l*).

The House of Lords in *Holywell Union and Halkyn Parish v. Halkyn Drainage Co.* (*m*) considered and defined the principles governing such cases. In this case both the owner and the drainage company had the right to the use of a tunnel made for the drainage of a mine. It was held that the drainage company were in rateable occupation; and that although the right was reserved to the owner to use the tunnel for tramways and other purposes, such user was not to obstruct or interfere with the works of the drainage company. In the judgments the rules determining such cases were stated. Thus it was said by Lord HERSCHELL, L.C. (*n*), "Land may be occupied for the purpose of, and in connection with, the enjoyment of an easement in such a manner as to make the person so occupying liable to be rated." But "where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive, he does not cease to be liable to the rate, nor does the other become so." As with a landlord and his lodger, "both are, in a sense, in occupation, but the occupation of the landlord is paramount, that of the lodger subordinate." And Lord

(*h*) R. & V.A., 1925, s. 20 (1); 14 Halsbury's Statutes 645.

(*i*) R. & V. (Apportionment) Act, 1928, s. 4; *ibid.*, 717.

(*k*) *Ibid.*, s. 3 (3); *ibid.*, 716.

(*l*) See title ASSESSMENT FOR RATES.

(*m*) [1895] A. C. 117; 38 Digest 424, 7.

(*n*) *Ibid.*, at pp. 120, 125, 126.

DAVEY (o) emphasising the same point, states, "It is clear that exclusive occupation does not mean that nobody else has any rights in the premises. . . . The cases show that if a person has only a subordinate occupation subject at all times to the control and regulation of another, then that person has no occupation, in the strict sense, for the purpose of rating, but the rateable occupation remains in the other, who has the right of regulation and control."

The Court of Appeal in an earlier case, *Smith v. Lambeth Assessment Committee* (p), had decided that the bookstall of Messrs. W. H. Smith and Son at Waterloo Station was not separately rateable. Following on these cases, in an appeal to the Railway and Canal Commission, the Southern Railway Company objected that premises at Victoria and Beckenham stations were not "so let out as to be capable of separate assessment," (q), and should be included in the assessment of the railway undertaking. The premises "let out" were of many kinds—coal depots, bookstalls, a bank, chemist's shop, toilet saloons, show cases and others. The Railway and Canal Commission allowed the appeal and held that the Court was bound by *Smith v. Lambeth Assessment Committee* (supra) to hold that the premises were in the rateable occupation of the railway company and not of the "tenants." They were therefore not so let out as to be capable of separate assessment (r).

The decision of the Railway and Canal Commission was overruled by the House of Lords (s), who also held that *Smith v. Lambeth Assessment Committee* and *London & North Western Rail. Co. v. Buckmaster* (r) were wrongly decided. Not that the rule under which those two cases were decided was wrong, but that on the facts in each instance the rule was wrongly applied.

Their Lordships approved of the decision in *Holywell Union and Halkyn Parish v. Halkyn Drainage Co.* (t), that for premises to be so let out as to be capable of separate occupation, and so to be separately rateable, the existence of a tenancy in law is not necessary, and that rateable occupation can exist in one who occupies only by virtue of a licence or easement if the occupation for his purpose is exclusive. It was held that all the premises which were the subject of the appeal were capable of separate occupation and that they were in fact in the

(o) *Holywell Union and Halkyn Parish v. Halkyn Drainage Co.*, [1895] A.C. 117, at pp. 133, 134; 38 Digest 424, 7.

(p) (1882), 10 Q. B. D. 327; 47 J. P. 244, C. A.; 38 Digest 446, 157.

(q) See Railways (Valuation for Rating) Act, 1930, s. 1 (3); 23 Halsbury's Statutes 455.

(r) *Re Southern Rail. Co.* (1935), 51 T. L. R. 415. Appeal under the Railways (Valuation for Rating) Act, 1930; 23 Halsbury's Statutes 455. March, 1935. R. & I. T. XXII., pp. 208, 232. See also *London & North Western Rail. Co. v. Buckmaster* (1875), L. R. 10 Q. B. 444; 38 Digest 446, 156 (stables at railway station, let to coal dealer); *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852; 38 Digest 447, 160 (berth in a dock with the adjoining quay space); *R. v. St. Mary Abbots* (1840), 12 Ad. & El. 824; *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515 (vaults and graves in cemeteries); *R. v. Morrish* (1863), 32 L. J. (M. C.) 245 (refreshment rooms at exhibition); *Percy v. Hall* (1903), 88 L. T. 830; 38 Digest 510, 640 (bridge; lessee of tolls held rateable); *Southport Corp. v. Ormskirk Union Assessment Committee*, [1894] 1 Q. B. 196; 38 Digest 443, 142 (gas mains; owners, not user, liable); but see *Liverpool Corp. v. Birkenhead Union* (1905), 70 J. P. 146, D. C.; 38 Digest 450, 173 (line of water pipes); *Cleveland Bridge and Engineering Co., Ltd. v. Darlington Union Assessment Committee* (1923), 21 L. G. R. 511, D. C.; 38 Digest 443, 138 (temporary buildings, contractors on railway land); and see *Re Nott & Cardiff Corp.*, [1918] 2 K. B. 146; *Canvey Island U.D.C. v. Essex County Council* (1934), 21 R. & I. T. 152 (café, recreation ground).

(s) *Westminster Corp. v. Southern Rail. Co.*, [1936] A.C. 511; Digest (Supp.).

(t) See note (m), ante, p. 333.

occupation of the tenants or licensees of the railway company. They were accordingly "so let out as to be capable of separate assessment" and were therefore hereditaments liable to be assessed and rated in the ordinary way. The rule was reaffirmed that where there is a competing occupancy the question, whose position in relation to occupation is paramount, is one of fact, and that it depends on the position and rights of the parties in the premises and on the purpose of their occupation. Further, that the general principle applicable to cases where persons occupy parts of larger premises is that, if the owner of the larger premises, who is also himself the occupier, retains to himself general control over the occupied parts, the owner is in rateable occupation; but if he retains no control, the occupiers of the various parts are in rateable occupation of those parts. The degree of control must be examined as to the extent to which its exercise would interfere with the enjoyment of the occupier of the premises in his possession for the purposes for which he occupies them, or would be inconsistent with his enjoyment of them to the substantial exclusion of all other persons. [756]

Effect of Valuation List.—The authority of the valuation list has been extended by the R. & V.A., 1925 (*u*), and grievances which formerly were remediable by appeal against the rate may now only be removed by amendment of the valuation list (*a*).

The values in the valuation list are conclusive for the purpose of the rate (*b*), but, in addition, no appeal against a rate may now be made on any matter if the relief sought might have been obtained by means of an amendment of the draft list or the valuation list.

If a person, therefore, *e.g.* maintains that he is wrongly rated as the occupier, or that he is described as occupying premises which in fact he does not occupy (*c*), his remedy is by way of objection to the draft list, or proposal for the amendment of the valuation list. If, however, the valuation list is correct, but the entry to which he takes exception is in the rate book, appeal will be against the rate, as before. [757]

Net Annual Value. Rateable Value.—Assessments in the valuation list are determined either on the gross value or on the net annual value of the hereditaments included in it.

The net annual value is also the rateable value, except in the case of tithes, land used as a railway, or as a canal, and land covered with water, where deductions specified in the Act may have to be made from the net annual value to arrive at the rateable value (*d*), and in the case of derated hereditaments, *i.e.* industrial and freight transport hereditaments (*dd*).

Some hereditaments require both a gross and a net annual value; in others a net annual value only is needed.

A gross value is to be entered (*e*) on all houses and buildings without land, other than gardens; and land (other than agricultural land) without buildings; and on these only.

(*u*) S. 14; 14 Halsbury's Statutes 638.

(*a*) See title RATING APPEALS.

(*b*) S. 20 (1); 14 Halsbury's Statutes 645.

(*c*) See *Manchester Overseers v. Headlam* (1888), 21 Q. B. D. 96, *per* WILLS, J., at p. 98; *Langford v. Cole* (1910), 74 J. P. 229; 38 Digest 453, 201; *Richard Wade-Gery v. St. Neots R.D.C.*, [1936] K. B. D. (inclusion in assessment of sporting rights not rateable).

(*d*) R. & V.A., 1925, s. 22 (1); 14 Halsbury's Statutes 646, and Sched. II., Part II.; 14 Halsbury's Statutes 693.

(*dd*) L.G.A., 1929, s. 68; 10 Halsbury's Statutes 928.

(*e*) *Ibid.*, ss. 21, 29, 58; *ibid.*, 645, 656, 679, and R. & V.As. (Form of Valuation List) Rules, 1932; S.R. & O., 1932, No. 395.

The net annual value and the rateable value, which are the same on these properties, are ascertained by deducting from the gross value the amounts specified in the Act (f).

No entry is to be made in any case of agricultural land and agricultural buildings (g) and no gross value or net annual value is to be entered of property occupied by or on behalf of the Crown for public purposes (h). If the rateable value in any case works out to a fraction of a pound, the amount is to be adjusted to the nearest complete pound, and if the fraction is ten shillings it is to be disregarded. Fractions of a pound are not to be entered in the rateable value column (i).

For Government property, and any property on which payment is made under the Lands Clauses Consolidation Act, 1845 (k), the value on which the payment or the contribution in lieu of rates is made is to be entered as the rateable value (l).

Railway property is to be indicated in the valuation list by the letter "R," and properties defined (m) as "agricultural dwelling-houses" are to be distinguished by the words "agricultural dwelling-house" in addition to any other description (n).

The method of arriving at the values to be entered in the valuation list is not affected by the R. & V.As., except where specially provided, as for instance in the exclusion of certain classes of machinery (o). It is expressly stated in the Act of 1925 (p), that nothing in that Act shall affect the principles on which hereditaments are to be valued, or any privilege or any provision for the making of a valuation on any exceptional principle. Exemptions or privileges, such as differential rating, conferred by a local Act or order, are not withdrawn, whether they be on a particular part of a rating area, or on the occupiers of particular hereditaments (q). [758]

Gross Value.—The gross value to be entered in the list is the annual rental value of the hereditament to be rated, and the Act directs that the true annual value for rating purposes is the rent at which the hereditament might reasonably be expected to let from year to year, the tenant paying all usual tenants' rates and taxes, and the landlord bearing the cost of repairs and insurance, and any other expenses necessary to maintain the hereditament in a state to command the rent (r).

Payment for any service which the landlord renders to the tenant other than the repair or maintenance of the hereditament is not to be reckoned as rent. So that if the landlord is paid by the tenant for

(f) R. & V.A., 1925, Sched. II., Part I.; 14 Halsbury's Statutes 692, as amended by the R. & V.A., 1928, s. 2 (3); 14 Halsbury's Statutes 708, and R. & V.A., 1932, s. 1 (1) (b); 25 Halsbury's Statutes 537.

(g) L.G.A., 1929, s. 67; 10 Halsbury's Statutes 927; R. & V.As. (Form of Valuation List), Rules, 1932; S.R. & O., 1932, No. 395, para. 5 (1) (a).

(h) *Ibid.*, para. 5 (1) (c), and R. & V.A., 1925, s. 64 (3); 14 Halsbury's Statutes 684.

(i) R. & V.A., 1925, s. 22 (1) (d); 14 Halsbury's Statutes 646.

(k) 2 Halsbury's Statutes 1113.

(l) R. & V.A., 1925, ss. 2 (7) and 64 (3); 14 Halsbury's Statutes 618, 684; and R. & V.As. (Form of Valuation List) Rules, *supra*, para. 5 (ii.), proviso.

(m) L.G.A., 1929, s. 72; 10 Halsbury's Statutes 931.

(n) R. & V.As. (Form of Valuation List) Rules, *supra*, para. 5 (i.) (b) and 5 (ii.).

(o) R. & V.A., 1925, s. 24; 14 Halsbury's Statutes 650.

(p) S. 64; *ibid.*, 683.

(q) See s. 68 (1); 14 Halsbury's Statutes 686. "Local Act" includes a Provisional Order confirmed by Act of Parliament; see title VALUATION FOR RATING.

(r) R. & V.A., 1925, s. 68; 14 Halsbury's Statutes 686. Definition "Gross Value."

services over and above the cost of repairs and maintenance, the value of those services is to be deducted from the rent before the gross value is arrived at (*s*). Such service, for instance, are those where the landlord of flats pays the cost of upkeep of the garden, or a servant's wages, or for central heating (*t*).

The rule laid down in the definition of "Gross Value" appears to be fairly simple, but in practice it is found to be commonly misunderstood.

It is perhaps worth while to note therefore that the Act does not state that the gross value is the rent paid. The rent at which the hereditament might reasonably be expected to let may be either a higher or a lower amount than the rent actually paid. The rent paid is a factor, and may be a very important factor, but it is not conclusive.

Gross value does not mean the rent paid by a tenant who also bears the cost of the usual landlord's repairs. In such case the amount spent by the tenant on these repairs must be reckoned as part of the rent.

Then that creation of rating law, the hypothetical tenant, has to be taken into account. The Act does not direct that the rent to be adopted as the gross value is the rent that you can reasonably expect the present tenant to pay. The rent to be found is the rent at which the hereditament might reasonably be expected to let in the open market to any one, including the present occupier, who may be prepared to pay a rent for it.

It does, however, appear to follow, clearly, from the definition that hereditaments which may be reasonably expected to let at the same rent should be assessed at the same gross value. [759]

Preparation of the List. Valuation List Rules.—The valuation list is prepared in draft by each rating authority for its own area (*u*) in the form prescribed by the Minister of Health under the power given to him in the Act (*v*).

In the Rules made by the Minister (*v*), "valuation list" includes a draft valuation list; and "parish" includes any part of a parish . . . subject to separate or differential rating (*a*). The rules provide as follows:

The valuation list must be in the Form A in the Schedule to the Rules, and the declaration and certificate in Form B (*b*). Where a rating area comprises two or more parishes, each of the three parts of the valuation list are to be divided into parochial sections, and the particulars relating to the hereditaments in each parish are to be entered in the appropriate sections (*c*).

The rating authority may enter the hereditaments in each parochial section of Parts I. and II. of the list in the order they may think convenient, subject to any direction given by the assessment committee, with the exception that tithes, land used as a railway or as a canal or towing path for a canal, and land covered with water are to be entered in one group, after the entries relating to other hereditaments (*d*).

(*s*) R. & V.A., 1925, s. 68; 14 Halsbury's Statutes 686, proviso.

(*t*) *Bell Property Trust, Ltd. v. Hampstead Borough Assessment Committee*, [1940] 3 All E. R. 640, C. A.; Digest (Supp.).

(*u*) R. & V.A., 1925, s. 25 (1); 14 Halsbury's Statutes 652.

(*v*) S. 58 (1); 14 Halsbury's Statutes 679. For form of Valuation List, see R. & V.As. (Form of Valuation List) Rules, 1932 (S.R. & O., 1932, No. 395) and Circular 1278 (May 31, 1932).

(*a*) Rule 1 (2).

(*b*) Rule 2.

(*c*) Rule 3.

(*d*) Rule 4 (1) (*a*).

Crown property also is to be entered in one group, at the end of the appropriate section (e), and instructions are given as to the entry of two or more hereditaments, which for the purposes of sects. 3 (3) and (4) of the R. & V. (Apportionment) Act, 1928 (f), are treated as if they formed parts of a single hereditament (g).

Freight transport hereditaments are to be entered in Part III. of the list in four separate groups, *i.e.* as hereditaments occupied (a) for railway transport purposes, (b) for canal transport, (c) for dock purposes, (d) for more than one of such purposes (h):

Detailed instructions are given as to the entries to be made in each column (i). No entry is to be made of agricultural land or agricultural buildings. Railway hereditaments are to be indicated by the letter "R." Separate particulars are to be entered if only part of a hereditament is land covered with water, or used as a canal or as a towing path, or as a railway. The estimated extent need not be entered in the case of a dwelling-house or other building without land, or of a railway hereditament or of any other which does not exceed one-quarter of an acre, or in any case where in the opinion of the rating authority the estimated extent is immaterial. A gross value is only needed for properties specified in Part I. of the Second Schedule to the Act of 1925, and no gross or net annual value is to be entered for Crown property (k).

An "agricultural dwelling-house" is to be so described, in addition to any other description. No values are to be inserted in the case of a church, chapel or any other hereditament so long as the occupier is wholly exempt. Where rates are paid under the Lands Clauses Consolidation Act, 1845, or contribution is made by the Crown, the value on which the payment or the contribution is made is to be entered as the rateable value (l).

The forms of valuation list for "industrial hereditaments" and for "freight transport hereditaments" are set out, and the manner in which entries are to be made (m).

Directions are given as to the method of making corrections, insertions, alterations or amendments of the list, which must be authenticated by the responsible officer of the rating authority or the assessment committee, whichever for the time being has the custody of the list (n).

Before the list is approved, the totals of the various columns are to be shown for each parish, and for the rating areas as a whole, distinguishing ordinary properties in Part I. and industrial and freight transport hereditaments in Parts II. and III. "Land covered with water" is to be indicated in the list by the letter "W," and the total of the entries so marked is to be shown separately (o). The totals of value for user for railway transport purposes, canal transport and for dock purposes are also to be distinguished (p). After the valuation list has been approved any corrections, insertions, alterations, and amendments, including any made by direction of quarter sessions, or the railway assessment authority, are to be recorded in the minutes of the assessment committee and the relevant totals in the summaries adjusted (q).

A book entitled "Record of Total Rateable Values" is to be kept by the assessment committee, in which are to be entered the totals of

(c) Rule 4 (1), (b).

(g) Rule 4 (1) (c).

(k) Rule 5 (i.).

(n) Rule 6.

(p) Rule 7 (ii.).

(f) 14 Halsbury's Statutes 715, 717.

(h) Rule 4 (2).

(l) Rule 5 (ii.).

(o) Rules 5 (iii.), 7.

(q) Rule 8.

(i) Rule 5.

(m) Rule 5 (iii.), (iv.).

rateable values for each parish and each rating area, and where any amendment is made in the valuation list the necessary correction in the totals is also to be made (*r*).

A copy of the draft list deposited by the rating authority is to be transmitted to the assessment committees (*s*), who are to retain the list, and correct it from time to time so that it may agree with the valuation list, except that they need not correct the record of total rateable values in the list (*t*).

When the value appearing in a draft list exceeded the value in the valuation list in force, it was formerly necessary for the rating authority to send notice to the occupier of the hereditament affected advising him of the increased assessment (*u*). This is no longer required, but if some hereditament not previously assessed is included in the draft list, notice is to be sent within seven days after the deposit of the draft list to the occupier, of the values inserted in the list (*a*).

It may be held that this provision applies not only to new properties, but to properties which are included in one assessment in the valuation list and are separately assessed in the draft list, and to remove doubt it would appear to be advisable that notice of the separate assessment should be sent to the occupier.

The form of declaration and certificate Form B appended to the Rules is to be signed by three members of the assessment committee present at the meeting when the valuation list was approved (*b*).

The declaration is that the provisions of the R. & V.As. have been duly complied with in respect to the list, and members of an assessment committee signing such a declaration must be conscious that they undertake a genuine responsibility. When the draft list is finally approved and the declaration and certificate (Form B, *supra*) appended, the list is to be forthwith transmitted to the rating authority, and notification sent to the clerk of the peace for the county or borough having a separate court of quarter sessions in which any part of the rating area is comprised, informing him of the approval, and the date (*b*). Before approving the list the assessment committee are to enter the totals of values prescribed (*c*) both in respect of the whole area and of any part of the area liable to be charged separately or to bear any special expenses (*d*). The list finally approved becomes the valuation list for the rating area, and, unless the contrary is proved, it is to be deemed to have been duly made in accordance with the provisions of the Act (*e*).

Any failure on the part of a rating authority or assessment committee to prepare the valuation list in the time required, or the omission of any matter that ought to be included, will not render the list invalid (*f*). A list, therefore, which is not finally approved by the date prescribed in the Act, *i.e.* January 31 (*g*), will not necessarily be

(*r*) Rule 9.

(*s*) R. & V.A., 1925, s. 25 (2); 14 Halsbury's Statutes 652.

(*t*) Rule 10.

(*u*) R. & V.A., 1925, Sched. IV., Part I. (3); 14 Halsbury's Statutes 696.

(*a*) R. & V.A., 1928, s. 4 (3); *ibid.*, 711.

(*b*) R. & V.A., 1925, s. 28 (1); *ibid.*, 655, and see Form B.

(*c*) See the R. & V.As. (Form of Valuation List) Rules, 1932, *ante*.

(*d*) R. & V.A., 1925, s. 28 (2); 14 Halsbury's Statutes 655.

(*e*) S. 28 (3); *ibid.*, 655.

(*f*) S. 44; *ibid.*, 671.

(*g*) S. 28 (1); *ibid.*, 655.

invalidated, and omissions may be rectified by the entry of proposals for the amendment of the list (*h*).

If an alteration of the valuation list is made necessary by a decision on appeal or the award of an arbitrator, or judgment of a superior court, which has been enrolled at quarter sessions, the clerk of the court is to send to the county valuation committee and the assessment committee a statement in writing signed by him setting out the decision of the court or the award or judgment and specifying the alteration to be made in the list (*i*) and the assessment committee will then direct the rating authority to make the alteration needed (*k*). [760]

Power to Require Returns.—In order that the rating authority in preparing the draft list may have information on which to base the values to be entered in the list, the Act (*l*) empowers them to require returns from the occupier or the owner or the lessee of any hereditament in the area, containing such particulars as may be reasonably required for the purpose of carrying out the Act. Anyone failing to comply with the notice requiring such particulars, without reasonable excuse, is liable, on summary conviction, to a fine not exceeding twenty pounds and to a further penalty not exceeding forty shillings for each day during which the default continues after conviction.

If a person wilfully makes a return which is false in any material particular he is liable on summary conviction apart from any liability to be proceeded against under any other enactment (*m*) to a fine not exceeding fifty pounds (*n*).

The assessment committee have the same power to require returns, with like penalties if there is failure to comply (*o*).

The power to require returns is not restricted to the preparation of the draft list. Both the rating authority and the assessment committee may at any time serve notice requiring a return, the rating authority either in connection with a proposal which has been made, or with a view of making a proposal, and the assessment committee wherever particulars may be required for the purpose of carrying out their duties under the Act (*p*).

The form of return to be used by the authorities is prescribed by the M. of H. (*q*).

It is not necessary that every occupier, owner or lessee should be asked all the questions embodied in the form. Those which are inappropriate to a hereditament may be omitted (*r*), but those which are appropriate must be included (*s*). It is clear from the wording of the rules that questions additional to those in the prescribed form may be asked, if the particulars asked for are such as may be reasonably required for the purpose of carrying out the Act (*t*). All that the rules

(*h*) S. 37 (1); 14 Halsbury's Statutes 664.

(*i*) S. 31 (10); *ibid.*, 657.

(*k*) S. 28 (5); *ibid.*, 656.

(*l*) R. & V.A., 1925, s. 40; 14 Halsbury's Statutes 670.

(*m*) *E.g.* on indictment under s. 5 of the Perjury Act, 1911; 4 Halsbury's Statutes 772, but he cannot be punished twice for the same offence (Interpretation Act, 1889, s. 33); 18 Halsbury's Statutes 1004.

(*n*) R. & V.A., 1925, s. 42; 14 Halsbury's Statutes 670.

(*o*) Ss. 41, 42; 14 Halsbury's Statutes 670.

(*p*) Ss. 40 (2), 41; *ibid.*, 670.

(*q*) R. & V.A. (Returns) Rules, 1926 (S.R. & O., 1926, No. 795).

(*r*) Rule 3.

(*s*) Rule 2.

(*t*) See R. & V.A., 1925, s. 40 (1); 14 Halsbury's Statutes 670.

require is that the notice asking for particulars shall include such questions in the prescribed form as are appropriate (*u*).

The question has arisen whether the authorities are entitled to require particulars of trade done, or of receipts and payments, where a hereditament is to be assessed on the accountancy method, and it appears to be doubtful whether such information can be required under penalty (*a*). The Central Valuation Committee therefore recommend, where information as to trade done is needed, that rather than formally to require such particulars under sect. 40 (4) at the risk of failure to enforce penalties under sect. 42 the valuer should request the brewer, occupier or agent as the case may be, to give such particulars of the trade done as they are able and willing to furnish, and that the request should be by letter or other means wholly separate from the form issued under sect. 40 (*b*).

Rating authorities, assessment committees and county valuation committees are all empowered to employ valuers and other officers to assist in the preparation of the valuation list, or to value any hereditament in their areas, and their valuers have the right, for the purposes of valuation, to enter any hereditament, under penalty if they are obstructed in the exercise of their powers (*c*). They may also, on payment, obtain from the surveyor of taxes a copy of the annual values under Schedule A. for the properties in their area (*d*). [761]

Service of Notices.—A notice, order or other document relating to the valuation list, which has to be sent or served for the purposes of the R. & V.As., may be sent or served by delivering it to the person, or by leaving it at his usual or last known place of abode, or in the case of a company at its registered office, or it may be sent by post to those addresses. It may be delivered to some person on the premises to which it relates, and if there is no one on the premises to whom it can be delivered, it may be fixed on some conspicuous part of the premises. Where the document relates to a person's place of business, it may be left at or forwarded by post to him at that place of business. If the notice or other document is to be served on the owner or occupier of any premises, it may be addressed to the "owner" or "occupier" of the premises named without further name or description (*e*).

Any document required or authorised to be transmitted to, or served on any public or local authority, will be deemed duly sent, transmitted or served if it is in writing and is delivered at, or sent by post to the office of the authority, addressed to the authority or to their clerk, and any such document issued by any authority or body will be sufficiently authenticated if it is signed by their clerk (*e*), or by any officer of the authority or body authorised by them (*f*).

Any officer of a rating authority, assessment committee or county valuation committee, acting under either a special or general resolution of the committee or authority, may authorise any proceedings in relation to the valuation list which they themselves have power to undertake (*g*). [762]

(*u*) Rules 2, 5.

(*a*) See Central Valuation Committee, Revised Representations, Resolution 61 (1), at p. 111. *Grant v. Knaresborough U.D.C.*, [1928] Ch. 310; 92 J. P. 30; Digest (Supp.), where it was held that a return requiring information as to takings and outgoings of licensed premises was invalid.

(*b*) Central Valuation Committee, Revised Representations, Resolution 61 (2).

(*c*) R. & V.A., 1925, ss. 38, 55; 14 Halsbury's Statutes 667, 678.

(*d*) S. 43 (3); 14 Halsbury's Statutes 671. (*e*) S. 59; *ibid.*, 680.

(*f*) S. 68 (1); definition "clerk"; *ibid.*, 686.

(*g*) S. 31 (9); *ibid.*, 657. And see title RATING APPEALS.

Uniformity.—One of the main purposes of the R. & V.A., 1925, as declared in the preamble (*h*) is to promote uniformity in the valuation of property for the purpose of rates.

The uniformity intended is uniform correctness in the application of the principle of valuation laid down in the definitions of gross and rateable values (*i*). The method of arriving at those values is not specified; but, by whatever method they are arrived at, unless the values entered in the list truly represent the rent that might reasonably be expected for the hereditaments assessed under the conditions named in the definitions, there will be no uniformity, either as between one property and another in the same area, or as between one rating area and another. Uniform incorrectness is, of course, not contemplated in the Act (*k*).

As has been stated (*ante*) the rent paid does not necessarily determine the true gross value, and in some cases where the occupier has himself extended or in some other way added to or improved his premises, the rent paid may not include the value of such additions. While, therefore, such information as that obtained from the returns received from owners and occupiers is essential in arriving at the normal standard of value for various classes of property, it cannot be relied on to give the true gross value in every case. The authorities can only satisfy themselves that an assessment is correct by consideration of each hereditament on its merits. [763]

Deposit of the List.—It is the duty of the rating authority after the draft valuation list has been prepared and signed by their clerk, to deposit it at their offices for twenty-one days, where it is to be open to inspection by any ratepayer (*l*).

As soon as the draft list is deposited, notice of the deposit is to be given to the county valuation committee, and published by affixing the notice in some public or conspicuous place in the area, and by inserting the notice in one or more newspapers circulating in the area (*m*). At the same time a copy of the list is to be sent to the assessment committee (*n*). [764]

Objection to the Draft List.—The notice of deposit must state the latest date at which objection may be made to the draft list, and the mode in which the objection may be made (*o*). The latest date for objection is before the expiration of twenty-five days from the date on which the draft list was deposited (*p*). The notice of objection must specify the grounds on which objection is made and be lodged with the assessment committee (*q*). The Act provides that any person who is aggrieved by the incorrectness or unfairness of any matter in

(*h*) 14 Halsbury's Statutes 617.

(*i*) See ss. 68, 22 (*h*); 14 Halsbury's Statutes 686, 646: *Ladies' Hosiery and Underwear, Ltd. v. West Middlesex Assessment Committee*, [1932] 2 K. B. 679; 96 J. P. 836; Digest (Supp.).

(*k*) As to revaluation of a county by instalments, see *R. v. Cornwall County Valuation Committee*, [1937] 2 K. B. 222, C. A.; Digest (Supp.).

(*l*) R. & V.A., 1925, ss. 25, 60 (1); 14 Halsbury's Statutes 652, 681; Sched. IV., Part I., *ibid.*, 696, and Inspection of Documents Rules, 1927 (S.R. & O., 1927, No. 76); 14 Halsbury's Statutes 778.

(*m*) R. & V.A., 1925, Sched. IV., Part I. (2); s. 46; 14 Halsbury's Statutes 696, 672.

(*n*) S. 25 (2); 14 Halsbury's Statutes 652.

(*o*) Sched. IV., Part I. (2); *ibid.*, 696.

(*p*) S. 26 (1); *ibid.*, 653.

(*q*) S. 26 (3), Sched. IV., Part II. (1); *ibid.*, 696.

the list may object (*r*), and it would appear that a complaint of incorrectness or unfairness will suffice to cover any grievance to be remedied by objection. The reasons or arguments in support of the objection need not be stated (*s*).

The procedure on objection to the draft list is dealt with under the title ASSESSMENT COMMITTEE (*t*). [765]

Revision of Draft List.—When the draft list has been deposited for twenty-one days it is to be sent by the rating authority to the assessment committee (*u*) together with any returns they have received under sect. 40 of the Act (*a*). These returns in due course, when the list is finally approved, or after the proposals for the amendment have been disposed of, as the case may be, are to be sent back by the assessment committee to the rating authority (*b*).

When the assessment committee receive the draft list from the rating authority, they may make whatever alterations, insertions or corrections in the list they think proper, whether it be for the purpose of meeting an objection or for any other reason (*c*). They must, however, in any event, finally approve the list not later than the thirty-first of January in the year in which the valuation list is to come into force (*d*) and whether the committee is satisfied with the list or not, it appears that if they refuse to give formal approval by the date stated, *mandamus* will lie against the assessment committee (*e*).

It is not necessary that the whole of the objections to the draft list be disposed of before the list is approved, but if some of them are then still undecided, they must be heard and determined as soon as possible after the list is approved, as if they were proposals for the amendment of the current valuation list, and with the same consequences (*f*). As soon as the draft list is approved it becomes the valuation list for the rating or part of a rating area for which it is made, and is sent to the rating authority to be deposited at their offices. It comes into force on the first day of April following the date of approval and remains in force until it is superseded by a new valuation list at the end of five years (*g*). [766]

Inspection of List.—The list may be inspected without payment at the offices of the rating authority at any reasonable time by any ratepayer, whether he be a ratepayer in that area or another, and he may take copies of the list or extracts from it (*h*).

(*r*) S. 26 (1); *ibid.*, 653.

(*s*) See *Gateshead Assessment Committee v. Redheugh Colliery, Ltd.*, [1925] A. C. 309; 38 Digest 604, 1309; *Halifax Equitable Benefit Building Society v. Bradford Assessment Committee* (1922), 86 J. P. 165; 38 Digest 604, 1308.

(*t*) See sub-headings "New Valuation List"; "Objections to Draft List"; "Persons Aggrieved"; "Notice of Objection"; "Hearing of Objections"; "Revision of Draft List."

(*u*) R. & V.A., 1925, Sched. IV., Part I. (5); 14 Halsbury's Statutes 696.

(*a*) S. 40 (4); *ibid.*, 669.

(*b*) S. 40 (5); *ibid.*, 669.

(*c*) S. 27 (2); *ibid.*, 654.

(*d*) Ss. 19 (1), 28 (1); *ibid.*, 644, 655.

(*e*) *Bognor Regis U.D.C. v. Chichester Assessment Committee* (1934), 20 R. & I. T. 187.

(*f*) R. & V.A., 1925, Sched. IV., Part III. (10); 14 Halsbury's Statutes 698.

(*g*) Ss. 19, 28 (1), (3); *ibid.*, 644, 656.

(*h*) R. & V.A., 1925, s. 60 (1); *ibid.*, 681; Inspection of Documents Rules, 1927; S.R. & O., 1927, No. 76; 14 Halsbury's Statutes 778.

If the valuation list is more than ten years old a fee of 2s. 6d. is prescribed for each list required to be produced, and copies of the list or extracts from them may be supplied on such terms as are agreed (i).

An occupier who pays a rent inclusive of rates has the right of inspection; and the inspection may be made on behalf of any ratepayer by an authorised agent (j). [767]

Revision of Valuation List.—If any person is aggrieved by the incorrectness or unfairness of any matter in the valuation list he may make a proposal for the amendment of the list (k). This is in effect to say that he may object to an assessment by making a proposal for its correction. A proposal may be made at any time while the valuation list is in force, and any amendment made in the valuation list as a result of the proposal will have effect from the commencement of the rate current at the date when the proposal was made, or where the rating authority themselves make the proposal, from the commencement of the rate current at the date when the authority served the copy of the proposal on the occupier or the owner; and the amendment has effect for the purposes of any subsequent rate (l). In some cases, however, the amendment does not have effect from the commencement of the rate. Thus, if new premises are erected or constructed, or premises have been unoccupied owing to structural alterations, or in any case where the value of premises has been affected by structural alterations, the amendment comes into force only from the date when the new or altered hereditament comes into occupation. If the value has been affected by the total or partial destruction of any building or other erection by fire or any other physical cause, the amendment takes effect from the happening of the event giving rise to the alteration of value, and where tithe, tithe commutation rentcharge, or other payment in lieu of tithe is wholly or partly extinguished, from the date on which the extinction takes effect (l).

It appears that a person aggrieved is not restricted to one proposal during the currency of the valuation list, or even during the currency of the same rate, but may make successive proposals relating to the same assessment, and they must be heard and determined by the assessment committee. The Court of Appeal has, however, declined to interfere by way of *mandamus* to compel an assessment committee to hear a second proposal, where a proposal in respect of the same hereditament had already been heard but the time for appeal against the decision had been allowed to expire (m).

The proposal is heard by the assessment committee exactly as if it were an objection to a draft list, and all the provisions in the Act relating to the hearing and determining of an objection apply equally to the hearing and determining of a proposal (n).

The grounds on which a proposal may be made are the same as those on which objection may be made (o).

The proposal must be made in writing, and served on the rating authority, and the grounds on which the proposed amendment is

(i) See note (h), p. 343, *ante*.

(j) R. & V.A., 1925, s. 60 (4); 14 Halsbury's Statutes 681.

(k) S. 37 (1); *ibid.*, 664.

(l) S. 37 (10), proviso; 14 Halsbury's Statutes 664.

(m) *R. v. West Norfolk Assessment Committee* (1930), 94 J. P. 201; Butterworths' R.A., 1926-1931, p. 418, C. A.

(n) R. & V.A., 1925, s. 37 (7); 14 Halsbury's Statutes 664.

(o) See ss. 26 (1), 37 (1); *ibid.*, 653, 664.

supported must be specified (*p*), though it is not necessary that the reduced assessment desired should be stated (*q*). If the proposal is not made by the occupier himself, the rating authority must within seven days after the proposal is made by them or is served on them, send a copy to the occupier, or if there is no occupier then to the owner (*r*). But this does not apply if the proposal is made by an owner who seeks to obtain a reduction in the assessment on his property. In such case it is not necessary to serve a copy of the proposal upon the occupier (*s*).

The rating authority must also send notice to the occupier, except in the case stated above, or to the owner, not less than twenty-one days before the date of the meeting, advising him of the date of the meeting of the assessment committee at which the proposal will be considered; and with the notice they are to inform him that, if he thinks fit, he may give to the rating authority notice in writing of objection to the proposal, and that unless he gives such notice he will not be entitled to be heard at the meeting in opposition to the proposal. He must send the notice not less than seven days before the date of the meeting, at which the proposal is to be considered, and state the grounds of the objection (*t*).

If the rating authority receives any notice of objection to a proposal, they must send a copy of the objection forthwith to the person by whom the proposal is made. If they themselves intend to object to the proposal, they must also forthwith give to that person notice of their intention and of the grounds of the objection (*u*).

It is the duty of the rating committee to furnish the assessment committee with the returns, and other particulars relating to proposals and notices of objection in their possession (*a*) and if they wish, the assessment committee themselves at any time may require returns from the owner, lessee or occupier of a hereditament (*b*). [768]

Correction of Errors.—An assessment committee may at any time correct any clerical or arithmetical error in the valuation list. But before making the correction, unless it is a correction of totals only, the occupier of the hereditament affected, and the rating authority, must be notified and allowed seven days in which to make objection to the proposed correction (*c*).

In the same way a rating authority may correct an error in the rate book (*d*), but unless it is merely the correction of a clerical or arithmetical error, or of an erroneous insertion, omission or misdescription, the amendment can only be made by proposal for amendment of the valuation list, and such amendment will have effect only from the commencement of the rate current when the proposal was made, or from the happening of the event giving rise to the alteration in value during the currency of that rate (*e*).

The two sections under which such amendments are made (*f*)

(*p*) S. 37 (2); 14 Halsbury's Statutes 665.

(*q*) *R. v. West Norfolk Assessment Committee* (1930), 94 J. P. 201, C. A., per SCRUTTON, L.J., at p. 202; *Lilley and Skinner, Ltd. v. Essex County V.C.* (1935), 22 R. & I. T. 216; *R. v. Thanet and District Assessment Committee*, [1939] 2 All E. R. 489; Digest (Supp.).

(*r*) R. & V.A., 1925, s. 37 (3); 14 Halsbury's Statutes 665.

(*s*) R. & V.A., 1928, s. 4 (2); *ibid.*, 711.

(*t*) R. & V.A., 1925, s. 37 (3), (4); *ibid.*, 665.

(*u*) S. 37 (5); *ibid.*

(*a*) S. 37 (6); *ibid.*

(*b*) S. 41; *ibid.*, 670.

(*c*) S. 30; *ibid.*, 656.

(*d*) S. 5; *ibid.*, 625.

(*e*) S. 37 (10); *ibid.*, 666.

(*f*) Ss. 5 and 37 (1); *ibid.*, 625, 664.

have to be read together (*g*). Sect. 5 (1) of the Act (*h*) provides that the rating authority may amend either the current or the last preceding rate; but sect. 37 (1) (*supra*) requires that where the rating authority make any amendment in the rate other than the correction of an erroneous insertion, omission or misdescription, they must forthwith make a proposal for any necessary amendment of the list. The same section makes it clear that an amendment made on a proposal cannot alter the rate last preceding the one current when the proposal was made. And there is the further provision in the Act (*i*) that the values in the valuation list are conclusive evidence for the purpose of every rate. The apparent dilemma was considered by the court in *Foleshill R.D.C. v. Perkins* (*j*) and it was held that an alteration of the valuation list could not affect a rate preceding that current when the proposal to amend was made.

The assessment committee is required to hold such meetings as in their opinion are needed for the prompt disposal of the proposals made, on dates fixed by agreement with the rating authority (*k*).

Proposals as stated (*ante*) are heard and determined by the assessment committee as if they were objections to the draft list, and the procedure is the same. This has already been dealt with under the title ASSESSMENT COMMITTEE (*q.v.*).

Appeal to quarter sessions may be made against the decision of an assessment committee on the hearing of a proposal, as in the case of the hearing of an objection. Any person who appeared before the assessment committee on the consideration of the proposal, if he is aggrieved by the decision of the committee, may appeal against the decision (*l*).

Evidence.—Evidence of the valuation list in force or an extract from it, may be proved by the production of a copy of the list, or of the extract, certified by the clerk of the rating authority to be a true copy or extract, and that all alterations required to be made in the list have been correctly made in the copy or extract produced (*m*). As this provision applies only to the list for the time being in force, it would appear that if proof of an older list is needed the original list must be produced.

Default in Preparation of List.—In order that there may be no failure to prepare the valuation list, if it is shown to the satisfaction of the High Court on application by the M. of H., or a county or county borough council concerned, that there is reason to apprehend that through default by an authority or committee or person, the valuation list for the area will not be prepared in time, the court may appoint a person to make and approve the list, or to do anything which ought to have been done by those responsible, and charge the costs on the authority, committee or person in default (*n*). [769]

Claim for Derating.—If any premises become entitled to derating, they cannot be entered in the valuation list as industrial or freight transport hereditaments nor can a hereditament be removed from the list on the ground that it is agricultural, unless claim is made by the owner or the occupier (*o*).

(*g*) For a full explanation of the effect when they are so read, which is at first sight difficult, see *Ryde on Rating* (7th ed.), 1940, para. 668.

(*h*) R. & V.A., 1925; 14 Halsbury's Statutes 617.

(*i*) S. 20 (1); *ibid.*, 645.

(*j*) (1931), 14 R. & I. T. 207.

(*k*) R. & V.A., 1925, s. 37 (11); 14 Halsbury's Statutes 664.

(*l*) S. 31 (1); *ibid.*, 657, and see title RATING APPEALS: *Hulme v. Bucklow Assessment Committee*, [1940] 2 K. B. 255; Digest (Supp.).

(*m*) S. 43 (1); 14 Halsbury's Statutes 670.

(*n*) S. 39; *ibid.*, 668.

(*o*) L.G.A., 1929, s. 70 (2), (4); 10 Halsbury's Statutes 930.

The claim is made by proposal under sect. 37 of the R. & V.A., 1925 (*p*), in a prescribed form, which is supplied by the rating authority on demand of the owner or occupier (*q*).

If the valuation list is amended as a result of the proposal, the amendment will have effect from the date when the hereditament became or ceased to be agricultural, industrial or freight transport as the case may be (*r*).

It will be noted that while hereditaments which are not already treated in the list as agricultural, industrial or freight-transport can only be so treated on claim by the owner or the occupier, the Act does not debar the rating authority or any person from making a proposal to amend the list on the ground that a hereditament is not entitled to be so treated. [770]

Railways.—All hereditaments occupied by railway companies are to be entered in the valuation list, but the procedure relating to the assessment of railway properties and the method of appeal are regulated by the Railways (Valuation for Rating) Act, 1930 (*s*), and differ from the practice applying to other property.

The rating of railways is dealt with elsewhere (*t*), but it may be noted that "railway hereditament" under the Act of 1930 does not include premises occupied as a dwelling-house, hotel or place of public refreshment, or so let out as to be capable of separate assessment (*u*). Such premises therefore will continue to be liable to assessment, and subject to appeal, as before the passing of that Act.

The values and other particulars of railway properties to be entered in the list are supplied to the rating authority and the assessment committee by the railway assessment authority (*a*) which is the authority constituted under the Act of 1930 for the purposes of the valuation of railway hereditaments (*b*), and these values and particulars are to be entered in the valuation list by the assessment committee in substitution for any values or particulars appearing in the list (*c*).

The first valuation roll came into force as from April 6, 1931, in London, and from April 1, 1931, in the rest of the country (*d*). Subsequent lists follow at intervals of five years (*e*).

During the quinquennial period, if any person is aggrieved on the ground that the value of any hereditament has been affected by some change in the occupation or in the nature of the structure, representation may be made to the railway assessment authority and they have power to make such alteration as they think fit (*f*). Appeal from the decision of the railway assessment authority is to the Railway and Canal Commissioners (*g*). [771]

(*p*) 14 Halsbury's Statutes 664 (see *ante*, p. 344).

(*q*) See the R. & V. Acts (Forms of Proposal and Claim) Rules, 1932; S.R. & O., 1932, No. 282. Three forms are prescribed. Form A for claim that a hereditament is agricultural, Form B that it is industrial, Form C that it is freight transport.

(*r*) L.G.A., 1929, s. 70 (*3*); 10 Halsbury's Statutes 980.

(*s*) 23 Halsbury's Statutes 445 *et seq.*

(*t*) See title RAILWAYS, RATING OF.

(*u*) S. 1 (*3*); 23 Halsbury's Statutes 455.

(*a*) S. 8 (*4*); *ibid.*, 465.

(*b*) S. 2 (*1*); *ibid.*, 456.

(*c*) S. 12 (*1*); *ibid.*, 470. For form of Railway Valuation Roll, see R. & V.A. (Railway Valuation Roll) Rules, 1933 (S.R. & O., 1933, No. 451).

(*d*) Railways (Valuation for Rating) Act, 1930, ss. 3 (*2*), 23; 23 Halsbury's Statutes 458, 477.

(*e*) S. 3 (*2*); 23 Halsbury's Statutes 458.

(*f*) S. 11; *ibid.*, 468.

(*g*) S. 9; *ibid.*, 465.

VALUATIONS FOR RATING

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See also titles : ASSESSMENT COMMITTEES ;
RATING OF SPECIAL PROPERTIES ;
VALUATION LIST ;
VALUER.

Introduction.—The two principal Acts which govern valuations for rating are the R. & V.A., 1925 (*a*), which operates for the provinces, and the Valuation (Metropolis) Act, 1869 (*b*), which is limited in its operation to the County of London. Both Acts have been amended by provisions in the R. & V.As. 1928 (*c*) and 1932 (*d*). Moreover, assessments on certain specified hereditaments are materially affected by the R. & V. (Apportionment) Act, 1928 (*e*) (commonly called the De-rating Act) supplemented by the L.G.A., 1929 (*f*). The Tithe Act, 1936 (*g*), exempted all tithes from rating. The assessment for rates of railway hereditaments is governed by the Railways (Valuation for Rating) Act, 1930 (*h*), which set up a tribunal, called the Railway Assessment Authority, to deal with all such assessments direct, and for such assessments abolished the ordinary procedure contained in the principal Acts.

The rating statutes direct the ascertainment of gross value, in every case, subject to certain later specified exceptions. "Gross value" is defined in sect. 68 of the Act of 1925 (*i*) as "the rent at which a hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent. . . ." The metropolitan definition has a similar meaning (*k*).

(*a*) 14 Halsbury's Statutes 617.

(*b*) *Ibid.*, 552.

(*c*) *Ibid.*, 708.

(*d*) 25 Halsbury's Statutes 537.

(*e*) 14 Halsbury's Statutes 713.

(*f*) 10 Halsbury's Statutes 523.

(*g*) 29 Halsbury's Statutes 923.

(*h*) 23 Halsbury's Statutes 455.

(*i*) 14 Halsbury's Statutes 686.

(*k*) Valuation (Metropolis) Act, 1869, s. 4 ; 14 Halsbury's Statutes 553.

The basis of the rate charge, *i.e.* rateable or net annual value (which acts as the multiplier to be applied to the amount of rate in the pound), is, generally speaking, the result of a mere mathematical calculation, being determined from the amount of the gross value when ascertained.

The deductions to be made in the provinces are maximum rates and calculated on a scale specified in the schedules to the 1928 and 1932 Acts.

Rating assessments can be divided into two main categories: (a) those for which a gross value has to be found in determination of the net annual value, and (b) those for which the net annual value is determined direct. Rateable value, where it is not the same as the net annual value, is derived from it. [772]

VALUATION GUIDANCE

Other than the definition of gross value, little statutory guidance is given, but over a long period the courts have enunciated certain principles which are now firmly established and accepted.

Extent and Description of Hereditament to be Valued.—Before any valuation can be made it is necessary to know the extent of the hereditament under consideration. In connection with rating valuations, the extent of the exclusive and beneficial occupation will generally define the extent of the hereditament.

Occupation.—"Rateable occupation" has no statutory definition nor has it been exhaustively defined by judicial decisions. The matter is perhaps most clearly expressed by Lord WESTBURY in the case of *Mersey Docks v. Cameron, Jones v. Mersey Docks* (1). "It must be an occupation yielding or capable of yielding a net annual value. It is in this sense that I understand the words 'beneficial occupation'; whenever it is said to support a rate the occupation must be a beneficial one. On principle it is by no means necessary that the occupation should be beneficial to the occupiers. It is sufficient if the property be capable of yielding a clear rent over and above the necessary outgoings."

Rateable occupation must be exclusive, and the rule is that he is rateable who can maintain an action for trespass. Legal possession is not a conclusive test of beneficial occupation. Use and enjoyment of the hereditament is necessary, not merely residing in it. Rateable occupation must not be merely intermittent, although it need not be permanent. So long as there is intention to occupy, or retain for occupation, property may be rateable during a period of non-user (*e.g.* seaside shops, furnished houses, lands used as a catchment area). The occupation must be beneficial to the rated occupier, or capable of being so, but this does not necessarily mean pecuniarily profitable. The rule is that so long as the annual value of premises amounts to something in excess of the probable cost of maintenance, then it is a rateable hereditament. If the conditions are such that no rent could be obtained, or the cost of upkeep must exhaust the annual value, or the premises are so hampered by statutory restrictions as to be of no value to any occupier, then it becomes "struck with sterility." No tenant will give anything for an occupation which prevents the capacity to earn more than the rent he must pay, and if a statute prevents him earning anything there can be no rateable occupation (*Lambeth Overseers v. L.C.C.* (m), since no hypothetical tenant would pay a rent. Thus,

(1) (1865), 11 H. L. Cas. 443; 38 Digest 466, 286.

(m) [1897] A. C. 625; 36 Digest 247, 12.

although there may be legal possession and even physical possession, there is no rateable occupation. It is to be noted, however, that even if a property is a source of loss (such as sewage outfall works) it is still rateable; for if an authority did not own them, they would have to rent them in order to perform their statutory functions (*L.C.C. v. Erith Parish, etc., West Ham Parish v. L.C.C., etc. (n)*).

All property is therefore rateable if (i.) it is in exclusive occupation; (ii.) it is not struck with sterility; and (iii.) it is not exempted by statute or common law. Further, the extent of the occupation will determine the extent and description of the assessment. [773]

Quantum of Valuation.—This, of course, is based upon the definition of gross value, but in this connection it is necessary to observe the following:

In theory, rating valuations are built up on fiction which, however, must be based on real facts and real conditions as they exist at the time of making the assessment. Firstly, a tenancy of the hereditament must be assumed even though the very character of the property is such that it never would be let. The standard common for all valuations is that of the ordinary yearly tenant, paying a rental, made in the open market, at the time the valuation is made. The parties to the standard tenancy are also purely fictitious and are known as the hypothetical landlord and the hypothetical tenant. This assumes they have a separate existence, but they can merge into the owner-occupier. The reason for this fiction is that for rating valuations everything is reduced to the ordinary. For as the standard tenancy is to be taken as the most ordinary tenancy met with in practice, so also must the hypothetical parties, and it will then follow that the hypothetical rental, which is the standard to be taken, will also be the ordinary rental which might reasonably be expected for the hereditament. By the adoption of this ordinary state as standard, most hypothetical and actual tenancies are in every way concurrent. It may appear from this that the application of this simple thesis is free from difficulty, but it should be remembered that the ordinary hypothetical standard has to be applied to most complicated circumstances and conditions, in the valuation of hereditaments which are out of the ordinary and anything but simple in character.

The case of *Poplar Assessment Committee v. Roberts (o)*, established that the actual rent is evidence of the rental value but not the measure of it. Thus the rent recoverable under the Rent Restriction Acts does not fix the value for rating. The measure of value is the estimated existing (not future) rental value and so the property is to be valued as it stands to-day in the hands of the existing occupier with all the existing circumstances—this is the rule of *rebus sic stantibus*. It is to be noted, however, that easements *per se* are not rateable. The hypothetical tenant is a tenant from year to year, not for a term of years (*Staley v. Castleton Overseers (p)*), but the words in the definition of gross value must have some reasonable *cy-près* intendment given to them and it must be assumed that a tenant would make his calculation on the supposition of a longer duration of tenancy (*R. v. South Staffordshire Waterworks Co. (q)*). Rent, not profit, is the measure of annual value. If the motive of the tenant is to make a profit, the

(n) [1893] A. C. 562; 38 Digest 429, 42.

(o) [1922] A. C. 98; 38 Digest 520, 698.

(p) (1864), 5 B. & S. 505; 38 Digest 525, 725.

(q) (1885), 16 Q. B. D. 359; 38 Digest 551, 920.

amount likely to accrue may affect the rent he gives; but the latter is affected only so far as the profit is made on the premises to be rated. In *R. v. Verrall* (r), it was held that the profit from a racecourse was material evidence of value; and in *Kingston Union v. Metropolitan Water Board* (s), it was decided that the net annual value of premises occupied by a water undertaking must be based on, and therefore limited by, the amount of profits. Where the tenancy is not from year to year, certain adjustments are necessary to find the gross value. A lease for a term of years usually contains covenants for the tenant to pay for repairs and insurance. In this case, to get the rental equivalent to a yearly tenancy certain arbitrary percentages are in practice added to the lease rent—5 per cent. when internal repairs only are the tenant's liability and 10 per cent. in the case of a full repairing lease. Depreciation (*i.e.* sinking fund to replace the hereditament) always remains a liability of the landlord.

When the tenancy is a weekly rental, inclusive of rates, the owner undertakes liabilities normal to the tenant and the latter's rent is correspondingly increased compared with that of a yearly tenant. It is to be remembered that the rate in the pound likely to be levied in the future is the amount to be deducted from an inclusive rental when eliminating rates to arrive at gross value. The case of *Smith v. Birmingham (Churchwardens)* (t), held that the weekly rent multiplied by fifty-two equals the yearly equivalent, but it is thought that in weekly properties the preponderance of advantage is with the tenant who will therefore pay a higher weekly rent than he would a yearly (*i.e.* fifty-two times) rent, while the landlord also bears the risk of voids and losses. It would therefore appear that the hypothetical rent is lower than fifty-two times the weekly rent, and *Williams v. Sanders*, 1927 (u), seems to suggest that a contingency balance should be deducted.

It has been shown that statutory rental is the measure to be applied in ascertaining rateability. The estimation of this statutory rental in practical application to the different kinds of hereditaments to be valued for rating purposes will now be considered. The keynote to be remembered in all such valuations is the importance of uniformity not only between properties similar in character (and therefore possible of being grouped in one class), but also as between class and class, and also between properties where different methods are adopted in estimating this statutory rental. In classification we have (i.) properties ordinarily comparable such as houses, shops, etc., (ii.) properties difficult of comparison such as hospitals, town halls, and other special hereditaments, and (iii.) properties impossible of comparison like gas, water and electricity undertakings.

Under sect. 40 of the R. & V.A., 1925, the rating authority may require a return of particulars from owners and occupiers of their several hereditaments which is used as evidence of the facts essential to the compilation of the valuation list.

It must further be borne in mind that the quantum relates to "the rent," qualified only by the reasonableness of expectation. [774]

(r) (1875), 1 Q. B. D. 9; 38 Digest 526, 732.

(s) [1926] A. C. 331; 38 Digest 547, 901.

(t) (1889), 22 Q. B. D. 703, C. A.; 38 Digest 523, 719; *Rousou v. Photi*, [1940] 1 K. B. 299; Digest (Supp.).

(u) [1927] 2 K. B. 498; Digest (Supp.). The case did not relate directly to valuation for rates, but to income tax, Sched. A. For a discussion of the decision in relation to valuation practice, see Witton Booth, "Valuation for Rating" (1937), pp. 79, 80.

METHODS OF VALUATION

The method of valuation is not directed or limited by statute ; but certain methods have been universally adopted in practice. The object of every rating valuation, as previously mentioned, is to ascertain the gross value, *i.e.* the rent of a hereditament on a yearly tenancy. The established practices are :

- (a) The comparative method.
- (b) The structural method.
- (c) The accountancy method.

The Comparative Method.—"Value" is always understood to be a comparative term. Comparison with similar properties plays a very large part in all valuation practice.

The rents at which similar premises are let is the basis usually adopted when making comparison, and this promotes one of the leading objects of rating valuations, namely, equality as between various properties. The application of the comparative method lies in the ascertaining of yearly rents of large numbers of properties, grouping into classes, and fixing, in relation to rentals, a number of standard values to act as the basis to be applied to properties similar in character. This method is limited to properties which are absolutely comparable, *i.e.* like with like, and thus will exclude such special properties as public utility undertakings. The comparability of premises is essentially a matter of degree and all comparable properties of the same class are therefore reduced to a common standard, and the one universally adopted is that of accommodation and floor area. The rents supplied by the occupier's statutory form is a test for comparison and is *prima facie* evidence of statutory rental value (*i.e.* gross value).

The factors influencing rental values are many, and embrace the law of supply and demand, legislation, the locality, age, size, construction and character of the property. The poundage rates of a district influence rents where these include rates. The Central Valuation Committee have advised (i.) that the gross value of property must be estimated on the basis of rental value at the time of assessment and not any earlier time ; (ii.) that excessive rents should be ignored as well as uneconomic rents ; and (iii.) that for rating purposes the test is to decide how the "higgling of the market"—the joint operation of the factors enumerated above—has operated to adjust rents on a fair basis such as any tenant might reasonably be expected to pay any landlord.

Rental value is expressed by this method in terms of floor area, the superficial units of measurement adopted being the square foot, square yard or squares of 100 superficial feet. These areas are adopted uniformly for either outside measurements, *i.e.* including outside walls ; inside measurement, *i.e.* including only inside walls ; or carpet area, *i.e.* area of the floor space of the living rooms, excluding passages. The rate or rental value per unit of floor area is taken to vary with the position of the different floors and values are graduated according to the use thereof ; thus the ground floor normally is considered the most valuable, the first next, and so on. The proportion between the floor values will depend upon local circumstances. When correctly applied, this method results in fair and equitable assessments. Care is essential to ensure that in the comparison of property with a standard, each particular property is really comparable ; and to the extent that it differs from the standard, adequate allowance or adjustment must be made. Reductions of floor areas to units is necessary to effect reliable com-

parisons ; but it is only a mechanical process used in preparing material for the valuation, the latter being the actual decision and application of the appropriate rental value per unit of area. The figure thus arrived at may be more or less than the actual rent ; but if the standard of gross value is right, and proper adjustments are made to allow for the special circumstances of each property the result will be correct and will produce equality in rating, the main object of the 1925 Act. (See "Example Valuations" of houses and shops, *post*.)

Fluctuations of rental value affect the values in the valuation list. Where rentals of similar properties have risen since the making of a list, if such increased rentals represent true statutory rent, there will be lack of uniformity which is remediable by proposal. In the metropolis, however, owing to the peculiar incidence of sect. 47 of the 1869 Act, no alteration in the value could until recently be made by reason of a general rise or fall in rental value (*v*). The law was, however, temporarily assimilated in some degree to the provincial law by subsect. (2) of sect. 1 of the Rating and Valuation (Postponement of Valuations) Act, 1940 (*w*). The valuation list is static, unless a cause or change of circumstance arises which affects the particular property or all properties of a particular class. Maintenance of uniformity during the quinquennium depends on the *status quo* being maintained. Additions to a property during a quinquennium are revalued by "tacking on" to the quinquennial basis, the fabric itself thus remaining intact. A general "de novo" valuation is not made. Interim amendments to the valuation list are governed by some important case law. Accretions to rateable value are not to be obtained by rating authorities by adding a general percentage of increase to all assessments (*Stirk & Sons, Ltd. v. Halifax Assessment Committee*) (*x*), nor by a piecemeal process by valuing for increase certain classes of property and omitting others (*Double v. Southampton Assessment Committee*) (*a*).

The importance of individual valuation and its correctness at the time of assessment cannot be over-emphasised. Legal decisions do not, generally, annul the basis of valuation—it should be remembered that such pronouncements are made on certain facts applicable only where the facts are similar. Uniformity is difficult because of the lack of stability and fluctuations of rents. Nevertheless the establishment of basis or groupings of values being part of the machinery in making the individual valuation remains the established method principally adopted. In employing this method of ascertaining gross value by reference to rents at which similar premises are let it should be clearly understood that the method is directed to establishing the correct gross value of the particular property, and not towards producing uniformity. In *Ladies' Hosiery and Underwear, Ltd. v. West Middlesex Assessment Committee* (*b*) the principle was established that, if the value of a particular hereditament is *correct*, the fact that its value is not uniform with those of other comparable premises is a fact of no importance. [775]

(*v*) *R. v. Westminster Assessment Committee, Ex parte Junior Carlton Club*, [1940] 3 All E. R. 155 ; Digest (Supp.).

(*w*) The sub-section is, however, only to operate so long as the pre-war valuation lists in London are kept in force by sub-s. (1) of the same section ; see also sub-s. (4).

(*x*) [1922] 1 K. B. 264 ; 38 Digest 581, 1157.

(*a*) [1922] 2 K. B. 213 ; 38 Digest 579, 1145.

(*b*) [1932] 2 K. B. 679 ; Digest (Supp.).

The Structural Method consists of arriving at an assessment by having recourse to a percentage upon the capital value of an hereditament. Capital value includes the land and any works or expenditure on the land, buildings and rateable machinery. To the total capital value thus estimated, a percentage is applied which is in the nature of an annual interest or estimated annual yield of such capital. This is generally regarded merely as evidence of the rental value of the property, *i.e.* the rateable value thereof. This method forms a check on the comparative method which is particularly advisable where there is any doubt as to the reliability of tests drawn by comparison. It is commonly referred to as the "contractor's test" which assumes a hypothetical landlord providing a hereditament to let to a hypothetical tenant. Rateable value is taken as the amount of interest on the contractor's capital invested in the provision of the land, buildings and structural and other works.

The application of this method consists in (a) the ascertainment of the capital value, and (b) the percentage to be applied. The courts have considered this method as secondary to the comparative method, but have supported valuations thereunder. *Metropolitan Water Board v. Chertsey Assessment Committee* (c) and other cases show interest on capital cost to be a rough test of rental value—rough evidence, but still evidence, for the reason that if a person did not build he would have to rent and it is to be assumed that by building he obtains the hereditament best suited to his particular needs, and that he took the cheaper course.

Cost is not an infallible guide to rateable value. Cost which is incurred on outlay not accruing in beneficial occupation must always be disregarded. Capital value must always be found independently, using actual costs with discrimination. Whether architectural embellishment should be included or not depends on the position and use of the buildings, and whether it enhances letting value or whether such ornamentation is redundant. On the other hand, there may be a beneficial occupation in value far higher than can be shown by the cost. Many buildings erected during the war are now utilised for industry and in other ways. Generally they are not adapted to their present user. Surplus floor area, suitability of height, and methods of lighting, all affect the estimation of their rateable value.

The actual cost of the land is a guide to its value for rating, provided it will compare with the price of adjoining and similar land, and where a ground rent is paid under lease—that figure can be taken as rateable value of the land. [776]

Machinery.—The capital value of the plant and machinery on a hereditament is governed by sect. 24 of the R. & V.A., 1925. Only specified plant and machinery must be brought into account for the purposes of rating; these are set out in the Plant and Machinery (Valuation for Rating) Order, 1927 (d), which specifies what is to be rated. All plant and machinery is divided into two classes—power and process. Process machinery is eliminated from rateability. Unfortunately, sect. 24, above quoted, specifies what is to be rated, but not how it is to be valued. The principle is that the ascertained rateable value is to be for the hereditament as a whole with all land, buildings and such machinery as is rateable, at the rent which a hypothetical tenant would give for the property enhanced by the presence of such

plant and machinery, which latter must be regarded as part of the hereditament and not apart from it. Sect. 24 deems all machinery to be part of the hereditament and thus it assumes that it is provided by the hypothetical landlord, *i.e.* it is immaterial whether it is in fact provided by the actual landlord or the tenant. [777]

"Silent" Factories.—Many industrial hereditaments have had to close down owing to trade depression, and when valuing these properties the point arises whether sect. 24 of the 1925 Act refers to machinery and plant in active operation and so in rateable occupation, or includes also those mills closed down where the plant is inoperative. In other words, are "silent" mills rateable as mills? The process machinery usually remains in position and the whole plant may be periodically worked to prevent depreciation. Does the process machinery affect the assessment, the property being not an empty mill but a furnished hereditament? In *Staley v. Castleton Overseers* (e), it was held that the building remained rateable but should be valued at a reduced amount as a warehouse for plant. But in *Townley Mill Co. (1919), Ltd. v. Oldham Assessment Committee* (f), it was held that it was wrong to take into account the existence as well as the value of process plant and machinery having regard to sect. 24, and that the gross value should be the rent which a tenant would give to store loose chattels. To quote Lord MAUGHAM's judgment: "If certain machinery is treated as of no value for rating purposes it cannot serve to inflate the rateable value even on a warehousing basis." [778]

Effective Capital Value.—In all valuations on the structural method one has to remember that the purpose is to estimate a rental on a statutory basis. The calculation of a percentage on a certain capital value is not merely arithmetic. It is a carefully considered valuation of the capital value of each hereditament at the time of making the valuation, and having regard to the mode of occupation under the statutory tenancy, so that when the applied percentages thereon are calculated, the result will give a fair and reasonable rental, reasonably consistent not only with other assessments of hereditaments valued on this method, but also generally. The capital value thus estimated is called "effective capital value," and the best guide is actual cost, but this can fluctuate as between post-war and pre-war years (ff). Thus, the date of erection must be known so as to vary the costings to the time of assessment. Present day costs of machinery (generally installed pre-war) vary $\frac{1}{2}$ to $\frac{2}{3}$ in excess of pre-war costings. It is usual to estimate pre-war value and then to add a percentage to increase to present day effective capital value. This percentage can vary in comparison with property investment returns from 5 per cent. to 8 per cent. or 10 per cent. The custom in practice is to take 4 per cent. on land and 5 per cent. on buildings and $7\frac{1}{2}$ per cent. on machinery. It is advisable to adhere to a system which makes adjustments in value to present effective value rather than to alter the percentages. Such effective capital value is found by scheduling all the items in a hereditament and pricing each item. The Central Valuation Committee's admonition is to be respected, viz. that the valuer should take into account always the whole of the circumstances and conditions under which the owner has become the occupier.

The rate of interest to be applied to the effective capital values is

(e) (1864), 5 B. & S. 505; 38 Digest 525, 725.

(f) [1937] A. C. 419; Digest (Supp.).

(ff) References in this paragraph to "war" are to the war of 1914-18.

governed by the security of income from investments. In the case of public bodies, because of the high security offered they can borrow moneys at a lower rate of interest than ordinary commercial firms. Thus, in rating such properties on a structural basis arose the question whether these lower rates should be taken, thus producing a lower rateable value. *Metropolitan Water Board v. Chertsey Assessment Committee* (g) decided that 4 per cent. on cost of land and 5 per cent. on cost of buildings was a reasonable amount and not the $3\frac{1}{2}$ per cent. at which interest the board had borrowed their loan.

The valuation of the land and buildings is prepared separately. The valuation of the buildings is restricted to buildings solely, *i.e.* walls, floors, roofs, foundations and settings for plant.

The valuation of the power plant (excluding the process machinery as above indicated) is made by taking a percentage on the effective capital value, adjusting, where necessary, when such plant is in excess of requirements or where it varies in its efficiency. Special provision as to this case was made for valuations under the R. & V.A., 1925, by sect. 24 thereof, and this was applied to London by the R. & V.A., 1928 (gg). [779]

The Accountancy Method brings the net profits of a hereditament directly into account as evidence of the rent which a tenant would pay; *i.e.* the amount of rental is directly governed by the earning capacity of the business under consideration. Rateable value is, therefore, the net revenue producing capacity of capital sunk in the hereditament *i.e.* the net annual value received by the hypothetical landlord. For rating purposes, the measure of that capital is not the actual amount invested but that portion of it which is effective at the present time in the production of income. If a hereditament earns no income (or no net profits) it will have no net annual value—thus, if the takings are absorbed in the outgoings there will be no balance and a rateable value of “nil.” This method is properly applicable only in cases where (1) trade is absolutely inseparable from the particular premises where it is carried on, (2) the occupation is created under statutory authority, (3) the occupation is in the nature of a monopoly, and (4) where the hereditament extends into a number of parishes. In these cases it is *prima facie* the proper method (h).

The accountancy method is not available for ordinary business concerns, because the definition of gross value requires to be estimated “the rent which might reasonably be expected,” not “the rent which can be afforded.” Profits are associated with persons as well as premises and it is impossible to distinguish between the two. For these reasons, the courts rigidly refuse to allow any inquiry into profits except where it is absolutely impossible otherwise to estimate (not the rent a tenant can afford to give) but the rent which might reasonably be expected for the premises in their existing occupation. Thus, the method is restricted to valuations of certain revenue-producing statutory undertakings of a public and quasi-public nature, such as railways, water, gas, electricity, etc. In addition to these, there has grown up a practice of voluntarily submitting the books of trading for the

(g) [1916] 1 A. C. 337; 38 Digest 551, 919.

(gg) 14 Halsbury's Statutes . . . For full discussion of this complicated matter, see notes to those sections in Lumley's Public Health (11th ed.), pp. 2174 *et seq.* and 2267, and Chapters XX. and XXI. of Witton Booth, “Valuation for Rating” (1937), pp. 397 *et seq.*

(h) *Barking Borough Rating Authority v. Central Electricity Board* (1940), 104 J. P. 255.

examination of the valuer to enable him to estimate the rateable value of such properties as cinemas, licensed houses, cemeteries owned by private companies, etc., but in such cases the figures are used to confirm a valuation arrived at by the appropriate method.

In any undertaking, whether the premises are tenanted, or are occupied by the owner, the entire capital invested therein is made up of two parts; first, the capital value of the rateable hereditament, the property of the hypothetical landlord, and second, the capital which must necessarily be invested by the hypothetical tenant in the ordinary running of the business to enable him to earn profits. The procedure is to extract from the accounts particulars of the total amounts of the gross receipts (which includes all takings) and from this to make a series of deductions as follows:

							£
	Gross Receipts	-	-	-	-	-	
(a)	Less Working Expenses	-	-	-	-	-	
	Net Receipts+Rates	-	-	-	-	-	
(b)	Less Tenant's Share	-	-	-	-	-	
	Gross Value+Rates	-	-	-	-	-	
(c)	Less Statutables	-	-	-	-	-	
	Rateable Value+Rates	-	-	-	-	-	
(d)	Less Rates, R.V. £ at	×	in the £	-	-	-	
(e)	Rateable Value	-	-	-	-	-	
							£

To take each deduction separately and explain, is as follows:

The gross receipts comprise all legitimate receipts receivable by the hypothetical tenant arising out of his occupation. All receipts receivable by the hypothetical landlord are excluded. Rents received from properties separately assessed are ignored. Bad debts are deducted from the total gross receipts. In gas company valuations, residual receipts are not included, but are set off as a reduction of the working expenses.

From gross receipts is deducted (a) working expenses (excluding rates). These expenses comprise all tenant's legitimate working expenses necessary to earn the receipts—care being taken to eliminate all expenses payable by the hypothetical landlord and all expenses connected with repairs to, and maintenance of, the landlord's property. But repairs to anything comprising tenant's capital are regarded as working expenses. Income tax and land tax are not deductible items but rent paid for offices separately assessed is deductible. An amount is also allowable for renewal of tenant's chattels.

After deducting expenses, what is left equals net profits. The first claim on the latter is (b) the tenant's remuneration for interest on capital invested, profit on trading, and cover against risks. The net profit is, therefore, divisible between landlord and tenant. An appropriate share of the net profits for the tenant is usually calculated at 15 per cent. of the estimate of the present value of the capital which a hypothetical tenant would have to provide to run the concern. Where tenant's capital is small (e.g. small water companies) this amount would not provide an adequate inducement for a tenant to take the premises, and thus an amount equivalent to 10 per cent. of the gross receipts is allowed. The estimate of tenant's capital is the amount which a hypothetical tenant requires to run the business. All the capital in a concern is provided by landlord or tenant. The landlord's capital is confined to the hereditament, therefore all the remainder is the tenant's.

The first question is "what portion of the land, buildings and machinery is included in the hereditament." The hereditament is regarded as the freehold and everything comprised in it is part of the hypothetical landlord's portion and is thus rateable. What is excluded must be provided by the hypothetical tenant and is included in tenant's capital. The latter consists of cash required for working capital, rolling stock, tools, furniture, uniforms, etc. The value of the tenant's chattels must be based on present actual value and not the original value. The rate of interest (15 per cent.) for the tenant's share has the tendency to be reduced as the value of the tenant's chattels is inflated, and this percentage goes on merits and is bound up with security, the statutory limit imposed on dividends to be distributed, risks and casualties. The estimation of the percentage is a decision of fact not of law. It varies from $12\frac{1}{2}$ to $17\frac{1}{2}$ per cent. and cannot be considered apart from the tenant's capital. A large estimate of capital justifies a low percentage and *vice versa*. The case of *Railway Assessment Authority v. Southern Rail. Co. (hh)* exploded the fallacy that the percentage to be applied to the tenant's capital to represent tenant's share is governed by the dividend earning capacity of capital sunk in the landlord's portion of the undertaking and established the rule that landlord and tenant were not to be considered as joint adventurers.

From the remainder (gross value plus rates) must be deducted (c) the statutable, viz. "the average annual cost of repairs, insurance and other expenses necessary to maintain the hereditament in a state to command the rent." Only those repairs strictly appertaining to the rateable hereditament rank as statutable; those relating to the replacement and repair of tenant's chattels are a deduction under working expenses. Only the insurance relating to the hereditament comes under statutable. An average over three or five years is taken where the repairs do not fluctuate, but the whole circumstances at the time of the valuation must be considered so as to form an estimate of probable future cost. Other expenses include a renewal sinking fund which is based on the 3 or $3\frac{1}{2}$ per cent. table calculated on the estimated cost of renewing the perishable portion of the works at the end of its life. The rate of interest for this sinking fund is governed by the general value of money as shown by gilt-edged securities at the time of valuation. The lower the rate, the greater the sinking fund allowance, hence a lower rateable value. It is to be noted that sinking fund contributions for repayment of principal and interest on loans are not deductible, as they are charges on the landlord for capital sunk in providing the hereditament or in providing the tenant's capital. Also, a sinking fund for the repayment of loan contracted to raise capital for the construction of works is regarded as essentially a charge on the hypothetical landlord in providing the hereditament and is therefore not deductible.

Normally, the last complete accounts before making the valuation are used as the basis, but it is advisable to compare them with the last preceding five years to see if the last year is in any way exceptional. Any probable impending circumstances likely to affect the rent must be considered, but prophecy is dangerous and it is better to take the last year's accounts as in the case of *R. v. London, Brighton and South Coast Rail. Co. (i)*.

On the question of the deduction to be made in respect of (d) rates,

(hh) [1936] A. C. 266; Digest (Supp.).

(i) (1851), 15 Q. B. 313. See also *Barking Borough Rating Authority v. Central Electricity Board*, [1940] 3 All E. R. 477.

it will be observed that the rates are kept "in" the calculation till the very last because of the differing rate poundages in the areas.

An undertaking might extend into three or more rating areas, one of which contains the works (indirectly productive portion) and the others the mains (directly productive portion). The rateable value (e) as estimated above is the rateable value of the whole undertaking and is called the "cumulo." This has to be apportioned as between the productive and the unproductive portions and also as between the various areas. The total rateable values as apportioned, plus their respective rates, must equal the total rateable value of the entire undertaking plus rates.

The method of apportionment is to make a valuation of the whole concern to produce rateable value plus rates. From this is deducted the rateable values plus rates of the indirectly productive portions, i.e. works, plant and buildings, usually calculated on the structural method; but the percentage on the capital value has a direct bearing on the total rateable value as shown from the accounts and the amount of capital invested in the landlord's portion of the concern as shown by the capital account. In other words, the percentage which the total rateable value bears to such capital expenditure determines the percentage to be applied to the indirectly productives. After this deduction is left rateable value plus rates of the productive mains, and this is represented as a percentage of the gross receipts. This percentage is applied to the total receipts of each area and after the appropriate deduction has been made for rates in each area, the residue is the rateable value of the productive mains. When ascertaining this rateable value, it is to be noted that it is based on a percentage which the total rateable value plus rates bears to the gross receipts—and not the total rateable value "ex" rates: The reason for this is that when the former is done, and the actual rates as applicable to each individual area are deducted in that area, the resultant rateable values will be more truly apportioned than if the percentage were based on a figure excluding rates. The latter assumes equal rates in each area, which might not obtain, and the resultant apportionment would not then equal in aggregate the total rateable value plus rates as shown by the valuation *in cumulo*. [780]

EXAMPLE VALUATIONS

Advertisement Stations.—These valuations are governed by the Advertising Stations (Rating) Act, 1889. Advertisement hoardings are regarded as of two kinds, according to whether they fall under sect. 3 or four of the Act. The relevant sections are:

Sect. 2. which defines "owner" as the person receiving or entitled to receive the rack rent of land and premises.

Sect. 3 provides that where land or buildings are used for advertisement, but not otherwise occupied, the person permitting such user or the owner of such land or buildings is to be deemed in beneficial occupation. Thus, the person rateable is the lessor of the advertisement station, or the owner. Herein no gross value is required being outside the Second Schedule to the R. & V.A., 1925. Thus, if the hoarding is erected by a contractor, the rent paid is really a ground rent, and a percentage on the cost of erection should be added to this to get net annual value. But if the rent paid is for the use of the hoarding then a deduction (5 per cent.) is made for repairs and maintenance. Actual rent is *prima facie* evidence of annual value; but this requires comparison with rents of similar hereditaments on the basis of a foot super price factor having regard to size and position. The case of

Burton v. St. Giles' and St. George's Assessment Committee (k) is important as it established that the advertising agent was held to be not rateable.

Sect. 4 provides that where any land or hereditament is used for the purposes of advertisement and also occupied for other purposes then the rateable value of such occupation is to be estimated so as to include the enhanced value due to such user. The person here rated is the occupier of the land. In the case of *Lewisham Corporation v. Avey* (l), it was held that it was correct to rate an advertising hoarding on the flank wall of a house with the house, notwithstanding the lessee of the house received no rent from the station, the lessor retaining the side wall. The defects of this section are that it lays on an occupier of the parent hereditament a liability in which he is sometimes not interested and increases the charges to him not only of rates but water, electricity, etc. Difficulties arise where there are several occupations in the parent hereditament, and where the latter become temporarily empty while the advertisement remains in use.

It will be seen that the law requires amendment in regard to these valuations and the Central Valuation Committee have agreed this in principle. [781]

Agricultural Land and Buildings.—See title RATING OF SPECIAL PROPERTIES.

Houses.—The comparative principle of valuation is most commonly adopted for dwelling-houses. The system may be applied in any of the following ways, viz. (i.) reduced covered area; (ii.) carpet area (internal measurement); and (iii.) value per room.

(i.) Reduced covered area method consists in taking the frontage and depth of the main building and multiplying the area by the number of floors. The area of back extension will also require to be added.

(ii.) The carpet area system involves the internal measurement of all principal rooms, the total net area being the basis of calculation. The advantage over (i.) is that passages, halls and other waste areas are ignored.

(iii.) The value per room basis is estimated upon a unit represented by a room of certain size (say 120 ft. super in one class would be worth £6 gross value). The room unit will always be subject to local conditions, and to comparison with other houses in the same comparative class. With this unit in mind, the valuer inspects the house, and adjusts the figure up or down, according to the actual area and amenities of each room.

The object is to arrive at a unit of value to be applied to all comparable property. The unit of gross value is found for a street or group of comparable properties, thus :

Property.	Rent per annum in terms of gross value.	Area in superficial feet.	Actual price per foot in shillings.
2, Hill Street	£ 40	500	1·60
4, " "	25	450	1·11
6, " "	30	550	1·09
8, " "	50	500	2·00
10, " "	25	510	0·98

(k) [1900] 1 Q. B. 389.

(l) (1912), 76 J. P. 343, D. C. ; 38 Digest 458, 229.

If No. 8 is ignored as being excessive, the average of the remainder gives 1·14 shillings per foot super and the assessments on this basis would be :

Property.	Rent per annum.	Area in superficial feet.	Price per foot.	Datum value.
	£		s.	£
2, Hill Street	40	500	1·14	28
4, " "	25	450	"	26
6, " "	30	550	"	31
8 " "	50	500	"	28
10, " "	25	510	"	29

This method gives datum line values only and modifications are made before gross value is finally fixed.

Example. 2, Hill Street.

Datum-line value	-	-	-	-	-	-	-	£	28
								£	
Add : 2 bay windows (not in floor area)	-	-	-	-	-	-	-	1	
" 20 ft. extra garden to average	-	-	-	-	-	-	-	2	
" Garage for small car	-	-	-	-	-	-	-	5	
								8	
Deduct : Very old fashioned and not modernised								Say 10	
as others in comparative group								per cent. 8	
								5	
Gross Value	-	-	-	-	-	-	-	£	33

Rental value must always predominate in adapting valuation principles to practice, and datum line valuations, which are generally the result of arithmetical calculations, must be rigidly perused before the final valuation is made. In this connection, all other things being equal, the difference in datum line valuation due to a few extra square feet in area would be discounted. [782]

Shops.—The comparative method of valuation is usually adopted for shop properties, owing to the abundance of rental evidence available for this class of hereditament. The first stage is to classify the comparable shops into groups, and to relate these groups to the shopping centre of the town. Subsequently all the shop properties in each group are valued, for datum line purposes, at the same basic price per foot unit. Modern comparative practice advances a second stage to "zonal" valuation. The most valuable part of any shop is always that nearest the pavement line. The shop window attracts customers and gives prominence to the occupier's name. As the shop increases in depth, so the value of the rear area of the shop, with few exceptions, becomes less valuable.

In the practical application of zonal valuation, the shops in each particular group are divided into a series of hypothetical steps or strips, by imaginary lines running parallel with the pavement. The foremost strip is the peak unit, and each succeeding strip is valued at half the basic price per foot unit of the preceding strip. The difficulty is often to fix the depths of hypothetical division, because there are

no set rules for this purpose. Some valuers adopt steps of 15 ft., 25 ft., 25 ft. of depth per shop; others say 20 ft., 20 ft., 60 ft. of depth per shop.

Reasoned division is essential, and the initial survey of the shops should provide the basis of the reasoning—in other words, each group will depend upon local circumstances. Practical examples which assist in this connection are physical features in construction, *i.e.* depth of shop window, varying floor levels, stanchion projections, buttresses, and staircases. If these features are noted, it will be possible ultimately to obtain uniform zoning for all premises in the same group.

Example Analysis of Rent.

No. of shop	-	7, High Road	9, High Road	11, High Road												
Rent	-	£200 on lease (1939)	£150 on agreement (1918)	£250 p.a. (1936) landlord doing all repairs.												
Add for repairs	-	£20	£7	—												
Adjusted rent in terms of Gross Value	-	—	—	—												
	-	£220	£157	£250												
		Area.	Price.	Datum value.	Area.	Price.	Datum value.	Area.	Price.	Datum value.						
Analysis.		ft.	s.	d.	£	ft.	s.	d.	£	ft.	s.	d.	£			
Basement	-	200		3	25	300		3	37	300		3	37			
1st and 2nd floors		800		1	0	40	900		1	0	45	1000		1	0	50
Equivalent rental value of shop	-	*880		3	6	155	*700		2	2	75	*900		3	7	163
					220					157					250	

The price factor can be fairly taken here at 3s. 6d. per foot super based on the latest lettings (Nos. 7 and 11).

* Effective area is taken and is found by taking ratio of equal depths, *viz.* a shop with 20 ft. frontage and 100 ft. depth has a total area of 2,000 ft. but an effective area of 900 ft. made up as to—

$$\begin{array}{rcl}
 & & \text{ft.} \\
 \text{1st 20 ft. of depth} & = & 20 \times 20 = 400 \\
 & & \frac{20 \times 20}{2} = 200 \\
 \text{2nd 20 ft. of depth} & = & \\
 & & \frac{20 \times 60}{4} = 300 \\
 \text{Remaining 60 ft. depth} & = & \\
 & & \underline{\quad\quad\quad} \\
 & & 900
 \end{array}$$

To the area of the first 20 ft. of depth is added one-half the area of the second 20 ft. plus one-quarter the area of the remainder.

Having arrived at the unit value per foot (in the above instance, 3s. 6d. per foot super on the effective area), the valuation is built up as follows.

Example Valuation.

No. of shop - - -	7, High Road.	9, High Road.	11, High Road.
Effective area - -	880 ft.	700 ft.	900 ft.
Datum value at 3s. 6d. per ft. - - -	£ 155	£ 122	£ 157
<i>Additions.</i>			
Basement - - -	25	37	37
1st and 2nd floors - -	40	45	50
	65	82	87
Gross value - -	£220	£204	£244

For purposes of illustration, the datum line valuations above have not been amended. Many extra factors are involved in shop valuations, and due allowance must be made for deep arcade windows, return window frontages to side streets, shops which are larger or smaller than the average, lock-up shops, and physical defects, *e.g.* poor natural lighting or varying floor levels. These allowances are often made by percentage addition or reduction to datum line valuation. Return frontages are not infrequently valued in terms of shillings or pounds per foot run.

It is apparent that the zonal valuation of shops provides theoretically for shops of varying size, but extraordinarily large shops, both by way of frontage and depth, must receive especial consideration which may involve a "quantity allowance." This arises out of the economic law of diminishing utility. It is customary to construct a scale of allowance based upon actual shop areas and actual rents. In this way, the ratio of the rent fall, if any, may be more easily measured and applied in those cases within the scope of the scale where there is a lack of rental evidence. [783]

Licensed Premises.—See title RATING OF SPECIAL PROPERTIES.

Industrial Premises.—This class of hereditament benefits under the R. & V. (Apportionment) Act, 1928, in that the net annual value is apportioned as between that attributable to the industrial part of the hereditament and that attributable to the non-industrial part. If the net annual value is under £50, the property is regarded as wholly industrial and the amount reduced by 75 per cent., the remaining 25 per cent. being "rateable value." If the non-industrial value is under 1/10th the industrial value, then the property is regarded as wholly industrial. If the non-industrial value exceeds 1/10th of the industrial, then only the excess over 1/10th is reckoned as non-industrial.

Example.

What is the rateable value of a factory, the land being 120 ft. by 250 ft., the buildings with an estimated effective capital value of £7,100 and the rateable machinery worth £657? The non-industrial portion of the factory is estimated at £72 (garage and offices).

Valuation.

Land 120 ft. by 250 ft.=0.6886 acres at say £1,000	£	£
per acre	688	
At 4 per cent. thereon		27
Buildings—Effective capital value £7,100—		
At 5 per cent. thereon		355
Plant—Value for rating purposes £657—		
At 5 per cent. thereon		33
Total net annual value		£415

Portion attributable to industrial purposes=£343.

Portion attributable to non-industrial purposes=£72.

Apportionment of Value.

$$\begin{aligned} \text{Industrial part : } £415 - 72 + \frac{343}{10} &= 415 - 38 = 377 \\ \text{Non-industrial part : } £72 - \frac{343}{10} &= 72 - 34 = 38 \end{aligned} \quad \left. \vphantom{\begin{aligned} \text{Industrial part : } £415 - 72 + \frac{343}{10} \\ \text{Non-industrial part : } £72 - \frac{343}{10} \end{aligned}} \right\} £415$$

Rateable Values.

Industrial part : N.A.V.	£	£
Less 75 per cent. derating allowance	377	
	284	
Non-industrial part		95
		38
Total rateable value		£133

[784]

Mines, Brickworks, etc.—See title RATING OF SPECIAL PROPERTIES, Vol. XI., pp. 205—207.

Theatres, Cinemas, etc. *Example.*—What is the gross value and rateable value of a well-planned modern theatre seating 1,750 persons, opened in 1918 in a flourishing town on a valuable central site? Performance twice nightly, matinees Wednesday and Saturday. Closed all August. Takings for full house £62 each performance. Number of performances 650 per annum.

Valuation on Accountancy Method.

Gross receipts (admission, programmes, tobacco, chocs., etc.)	£	
(over five years' average)		17,000
Less working expenses and statutable :—	£	
Fees to artists	10,000	
Management costs (salaries, etc.), staff wages, cleaning materials, travelling, carriage and transport, taxes (+entertainment tax), stationery, printing, advertisements, postage, insurances, repairs, maintenance and renewals	3,605	13,605
Net receipts+rates		3,395
Less tenant's shares $17\frac{1}{2}$ per cent. on £6,000 tenant's capital (working cash, instruments, furnishings, office equipment, lighting and screen apparatus)		1,050
Rateable value+rates		2,345
Less rates, R.V. £1,400 at 18s. 6d. in the £		945
Rateable value		1,400
Add statutables (in working expenses above)		284
Gross value		1,684

Valuation on Structural Method.

<i>Land</i> —1,000 sq. yds. at £10—	—	—	£10,000 at 4 per cent.	£ 400
<i>Building</i> —pre-war cost (1913)	—	—	£12,000	
Add 60 per cent. increased costings to present day	—	—	£7,200	
Estimated effective value	—	—	£19,200 at 5 per cent.	960
Rateable value	—	—	—	£1,360

[785]

VALUER

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QUALIFICATIONS	—	—	—	366	LONDON	—	—	—	367
DUTIES	—	—	—	366					

See also titles : ASSESSMENT COMMITTEES ;
 RATING OF SPECIAL PROPERTIES ;
 VALUATION LIST ;
 VALUATION FOR RATING.

Provision is made in the R. & V.A., 1925 (a), for the appointment of valuers for rating purposes. Rating authorities, assessment committees and county valuation committees are all empowered to appoint valuation officers and other officers as they think fit, and to pay them reasonable salaries (b).

In addition to the general powers given, they may employ a competent person to give advice or assistance in the valuation of any hereditaments in their area, and he has power to enter on any hereditament in their area and to survey and value it, if directed by them to do so. He must, however, make his visit at a reasonable time, after giving due notice, and produce, if required, an authorisation in writing from the rating authority, signed by their clerk. Any person wilfully delaying him or obstructing him in the exercise of his powers is liable on summary conviction to a fine not exceeding five pounds (c).

It is clear from these provisions that the authorities may not only employ a permanent staff of officers capable of making valuations, but may call in the services of a special valuer if occasion arises on such terms as may be decided.

The terms of appointment and conditions of office of servants of the authorities are dealt with under the title RATING AND VALUATION OFFICERS. [786]

(a) 14 Halsbury's Statutes 617.

(b) S. 55 (1) ; 14 Halsbury's Statutes 678.

(c) S. 38 ; *ibid.*, 667.

Qualifications.—The Act does not specify the qualifications needed in the valuer, except that he must be a competent person (*e*).

The authorities in practice usually require of any one seeking appointment as a valuer that he shall have passed the final examination of the Chartered Surveyors Institution, or the Auctioneers and Estate Agents Institution, or the Incorporated Association of Rating and Valuation Officers, including the subject of valuation in each case. [787]

Duties.—The duties of the valuer cover the whole range of procedure relating to valuation for rating purposes. He advises the values to be entered in the valuation list, and acts on behalf of the authority in support of those values before the assessment committee on the hearing of an objection or a proposal, or at quarter sessions on appeal. A valuer employed by the assessment committee may be called as a witness on the consideration of an objection (*f*). But a valuer, if he is a party to an objection or proposal, or a witness in the case, or is a valuer employed by the assessment committee, may not be present when the assessment committee are considering their decision (*g*), nor may the county valuer, though he take no part in the deliberation (*h*). It is usual in the terms of appointment of a valuer who is not a member of the permanent staff of the authority to provide that any valuations made, or copies of them, are to be the property of the authority, otherwise the authority have no record, and are at a disadvantage in any proceedings that may arise later.

A valuation made by a valuer appointed by an assessment committee may be inspected, without payment, by any ratepayer, and he may take copies of it or extracts, except that if the valuation be more than ten years old a fee of 2s. 6d. may be charged for each document required to be produced (*i*).

The assessment committee, rating authority or county valuation committee may by special or general resolution empower their valuer to authorise the institution, carrying on, or defence of any proceedings in relation to the valuation list which they themselves are authorised to undertake (*k*).

On appeal to quarter sessions, the court may appoint a valuer to make a valuation of any hereditament in relation to which the appeal is made. Application must, however, be made by one of the parties to the appeal, either before the hearing or during the hearing before evidence as to value has been given. The valuer will have power to enter on, survey and value the hereditament, and the costs of the valuation will be costs of the appeal. On the application of any party, the court may call the valuer as a witness, and any party may then cross-examine him (*l*).

This procedure does not depend upon agreement between the parties to the appeal, and it is obvious that it is not intended that the valuation should be binding, as it is open to either party to cross-examine the valuer.

(*e*) S. 38 (1); 14 Halsbury's Statutes 678.

(*f*) R. & V.A., Sched. IV., Part III.; 14 Halsbury's Statutes 697.

(*g*) *Ibid.*, r. 4.

(*h*) See *R. v. Surrey Assessment Committee*, [1933] 1 K. B. 776; Digest (Supp.).

(*i*) R. & V.A., 1925, s. 60 (1); 14 Halsbury's Statutes 681, and Inspection of Documents Rules, 1927 (S.R. & O., 1927, No. 76); 14 Halsbury's Statutes 778.

(*k*) R. & V.A., 1925, s. 31 (9); 14 Halsbury's Statutes 659.

(*l*) *Ibid.* s. 33: *ibid.* 661.

If, however, the parties to the appeal agree in writing they may, without leave or reference to the court, appoint a valuer to value any hereditament or any part of it, and accept the valuation as binding, and may treat the costs as costs of the appeal (*m*).

The Central Valuation Committee emphasizes the importance of the employment of professional valuers for the valuation of special properties, and states that in the opinion of the committee certain rating authorities, owing to the value or special nature of the hereditaments in their areas, are justified in maintaining a whole-time professional staff for the work of valuation (*n*).

They also advise the appointment of county valuers, and that in each county there should be a panel of valuers to advise the rating authorities and to work in conjunction with the valuer for the county (*o*).

A panel of valuers has been set up under the provisions of the 1925 Act (*p*) to deal with questions that may arise on the valuation of hereditaments containing machinery and plant. If doubt is raised as to whether any particular plant or machinery is to be deemed to be a part of the hereditament, the assessment committee or the court may, with the consent of the parties, refer the question to any member of the panel as may be agreed, and the award of the referee is final and conclusive (*q*).

[787a]

London.—As to valuers for rating purposes, see London note to title RATING AND VALUATION OFFICERS.

The title VALUER is applied to the chief officer of the Valuation Estates and Housing Department of the London County Council. He is responsible for administering the council's housing services and the management of the council's property in land and houses, purchases, sales, insurance, rating and town planning matters. [788]

(*m*) R. & V.A., 1925, s. 31 (6); 14 Halsbury's Statutes 657, and see title RATING APPEALS.

(*n*) Revised Representations, Resolution 27, at p. 78.

(*o*) *Ibid.*, Resolution 28, at pp. 78, 79, and notes by the committee thereon, pp. 79, 80.

(*p*) Circular of the M. of H., June 2, 1927.

(*q*) R. & V.A., 1925, s. 24 (7), (9); 14 Halsbury's Statutes 650, and see title MACHINERY, RATING OF.

VEHICLES, LIGHTS ON

See MOTOR VEHICLES ON HIGHWAYS; ROAD TRAFFIC.

VENEREAL DISEASES

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See also titles : CLINICS ;
DISPENSARIES ;
HOSPITALS ;
POOR LAW INSTITUTIONS.

Preliminary Observations.—Venereal diseases like other diseases are commonly dealt with by local authorities in hospitals, clinics, etc. For their general powers in this respect, see the titles CLINICS, HOSPITALS, POOR LAW INSTITUTIONS, etc. Venereal diseases are contagious, but are not in the ordinary category of “notifiable diseases.” Persons suffering from such diseases are not subject to any form of control on that score (a).

Venereal diseases are singled out by the State for special control for the following reasons. They are contagious and widespread diseases, and are usually spread by sexual intercourse, but occasionally by extra-genital contact, such as kissing or the mutual use of some infected article. The sexual intercourse which spreads the disease may be marital, but more often it is extra-marital. For this reason the presence of the disease, if revealed to others, may involve the sufferer, rightly or wrongly, in being suspected of sexual immorality. Hence there is a tendency for the disease to be concealed. Furthermore the disease rarely undergoes spontaneous cure and the sufferer may, if he remains untreated, be infectious over a long period and may become seriously ill or incapacitated. The cure of venereal disease may be a simple matter, but it is usually long and difficult and requires the attention of a medical expert. Too often the sufferer tends to resort to treatment at the hands of an unqualified practitioner, who may be able to bring about some alleviation of the symptoms without effecting a permanent cure. Lastly, the disease may be hereditary, and it is, therefore, important that prospective parents should be free from the disease.

By sect. 1 (1) of the Venereal Disease Act 1917 (b), no person except a qualified medical practitioner may, for direct or indirect reward, treat any person for venereal disease or prescribe any remedy therefor, or give advice (to the patient or any other person) in connection with

(a) Poor Law Act, 1930, s. 34 ; 12 Halsbury's Statutes 978, provides that an inmate of a workhouse suffering from a bodily disease of a contagious nature may be detained in certain circumstances, and it is submitted that such powers of detention are applicable to persons suffering from contagious forms of venereal diseases.

(b) 11 Halsbury's Statutes 741.

the treatment thereof. The provision operates only in areas to which it is applied by order of the M. of H., who may make such order only in respect of an area where an approved scheme for gratuitous treatment is in operation (sect. 1 (2)) (bb). [789]

Special Powers and Duties of Local Authorities.—The Public Health (Venereal Diseases) Regulations, 1916 (c), pronounce venereal diseases to be endemic and infectious diseases. The regulations define venereal disease as meaning syphilis, gonorrhœa or soft chancre. Every county authority must, subject to the approval of the M. of H., make arrangements for enabling any medical practitioner, practising in the area of the council, to obtain, at the cost of the council, a scientific report on any material which he may submit from a patient suspected to be suffering from venereal disease (d).

The authority must administer a scheme, approved by the M. of H., for the treatment, at or in hospitals or other institutions, of persons suffering from venereal disease, and must arrange for the supply to medical practitioners of salvarsan or its substitutes, for the treatment and prevention of venereal disease. The hospitals and institutions referred to may be under voluntary or municipal management. All information obtained in regard to any person treated under an approved scheme must be regarded as confidential (e). [790]

The Approved Scheme.—The Local Government Board laid down certain basic principles in a circular of July 13, 1916. The treatment provided must be available to all comers, irrespective of the place of residence or the means of the patient. Clinics should not be specially designated as for venereal diseases and nothing should be done to distinguish a patient who attends for venereal disease from other patients. The times fixed for holding the clinics must be such as will meet the needs of all patients. The scheme must be so framed as to develop the ability of general practitioners in treating the diseases. Medical students and practitioners should have access for observation of the treatment of venereal diseases at the various hospitals and institutions. The M. of H. has called attention (f) to the need for co-ordinating the treatment scheme with the maternity and child welfare and school medical services, and for securing the maintenance of the attendance of patients by utilising the services of properly trained workers for home visiting. The reasonable travelling expenses of patients may be repaid to them. It is not the general practice to recover costs for the treatment of venereal disease, but the M. of H. has suggested (g) that charges might be made experimentally at certain sessions held at clinics for venereal diseases.

The medical measures against venereal diseases are elaborated in a Memorandum of the Medical Officer of the Local Government Board (July, 1916). It is laid down that a suitable place for a clinic is a general hospital in a town, preferably one with a medical school attached. Hospitals for women and children are suitable for the special treatment of women and children in clinics. The sessions at a clinic must be

(bb) See editorial note to the sub-section in 11 Halsbury's Statutes 741.

(c) S.R. & O., 1916, No. 467.

(d) In circular 992 of June 19, 1929, the M. of H. states that venereal disease in a communicable stage only is referred to in this connection.

(e) For a discussion of this matter, see Annual Report of Chief Medical Officer, M. of H., 1919-1920, p. 163.

(f) In circular 1474, April 9, 1935.

(g) Circular 1811, March 22, 1933.

separate for each sex. A small number of beds are necessary for the treatment of syphilis by salvarsan or its substitutes, for the temporary treatment of certain acutely contagious cases, and for cases in urgent need of surgical treatment. A record must be kept of the essential points as to each patient's condition, progress and treatment. The record is identified by a number only and gives the area from which the patient comes in order to facilitate any financial adjustment between one area and another. The name and address of the patient is noted confidentially and apart from this record. The information is used solely for communications to the patient. The duties of the county M.O.H. are laid down in detail.

The policy of the M. of H. as regards modifications or extensions of approved schemes is fully indicated in Circular 1072 of February 12, 1930. The Minister states that he is advised that it is necessary, under the Regulations, for his approval to be obtained to any proposed modifications of the arrangements already approved which would result in a curtailment of facilities for diagnosis or treatment, but he formally indicates his sanction of any extension of such arrangements which councils may think desirable, provided that the arrangements are made with approved laboratories or institutions. It is also necessary to obtain his approval of the supply to medical practitioners of any arsenobenzene preparation which is not included in the lists of approved preparations issued from time to time by the Minister.

The Minister's past approval of laboratories and institutions was given subject in each case to certain specified conditions, and he formally varies the terms of these approvals so as now to require only the following conditions to be observed :

(1) That the laboratory or institution, and the records kept thereat, are open to inspection at any time by any officer of the Ministry ; (2) that such records are kept, and such returns are made, of the work of the laboratory or institution, as the Minister may from time to time require ; (3) that the Wassermann tests at the laboratory are performed under the personal supervision of the medical officer in charge of the laboratory, and that such tests conform to the standards of technique approved by the Minister ; and, in the case of a laboratory or institution which is not provided by a local authority, the further condition (4) that the medical officer in charge of the laboratory or institution possesses the qualifications prescribed in the Regulations made by the Minister under sect. 180 of the P.H.A., 1936, for a medical officer in charge of a laboratory or for a medical officer in clinical charge of a treatment centre, provided by a local authority, as the case may be.

The efficiency of the venereal disease services is to some extent ensured by the inspection of the services by the medical officers of the M. of H., this being part of the general inspection of public health services undertaken by the Ministry from time to time. Such inspections are necessary in order that the Minister may be satisfied that each local authority is maintaining a reasonable standard of efficiency and progress in the discharge of their functions relating to public health services, regard being had to the standards maintained in other areas whose financial resources and other relevant circumstances are substantially similar. [791]

The Prevention of Venereal Disease.—Since venereal disease is largely spread through irregular sexual intercourse, all measures directed to the improvement of personal morality are effective in preventing the

disease. Some authorities are concerned indirectly, so far as they can improve housing conditions, provide means for public recreation and games, close disorderly houses, etc. More direct propaganda is possible. The Regulations authorise local authorities to make such provision for the giving of instructional lectures and for the publication of information on questions relating to venereal disease as they may think necessary or desirable. Similar powers are available by virtue of sect. 179 of the P.H.A., 1936. It is found in practice that propaganda against venereal disease, touching as it does on moral and social questions, requires skilful handling, and has to be varied according to the type of recipient, e.g. adolescent or adult. For this reason most authorities prefer to utilise a voluntary society which retains a panel of lecturers. The best known society is the British Social Hygiene Council (Incorporated), Tavistock House South, Tavistock Square, W.C.1.

It is possible to prevent the infection of syphilis by the application of an antiseptic to the site of inoculation shortly after the time of infection. This has led to the advocacy of the prophylactic use of antiseptic substances after exposure to the risk of infection. In their Circular 202 of May 31, 1921, the M. of H. state they cannot give official support to self-disinfection as a policy. They find that medical opinion is divided on the question of the efficacy of self-disinfection for the general population, and in particular on such questions as (1) whether it is practicable to give such instruction to the population generally as will ensure that the disinfectants are thoroughly and skilfully applied; (2) whether the spreading of knowledge as to the efficacy of disinfectants would not lead to persons running the risk of infection who would otherwise avoid that risk, and thus increase the spread of disease; and (3) whether the disinfectants would not be used in some cases for the treatment of developed disease with the result that proper treatment would be delayed and the cure of the disease rendered more difficult and uncertain. It is also pointed out that on the moral and social side most weighty objections are advanced against self-disinfection. The voluntary society associated with this aspect of prevention is the National Society for the Prevention of Venereal Disease, 58 Gordon Square, London, W.C.1, which receives financial support from a number of local authorities.

In a few instances the M. of H. have approved of the experimental provision of ablution centres, where facilities are provided, with proper safeguards, for disinfection, after sexual intercourse, by skilled attendants acting under medical supervision. [792]

The Officers.—The Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (*h*), require that a venereal diseases officer, that is, a medical officer in clinical charge of a treatment centre, shall be a registered medical practitioner with three years' experience in the practice of his profession subsequent to qualification. He must also possess a certificate given by the venereal diseases officer of a treatment centre, at which not less than 500 patients attended for the first time during the twelve months preceding the issue of the certificate, testifying that he has attended at the treatment centre for a period of not less than three months and has received during that period not less than 130 hours' instruction in the modern methods of diagnosis and treatment of venereal diseases.

The Regulations also require that a venereal diseases pathologist, that is, a medical officer in charge of a laboratory provided under a scheme, shall be a registered medical practitioner with three years' experience in the practice of his profession subsequent to qualification. He must also possess a certificate, given by a pathologist in charge of a laboratory approved under a scheme, testifying that, under his supervision, he has, within the preceding two years, personally carried out not less than 500 serum tests for syphilis by a method approved by the M. of H., and that he is competent to perform such tests, and that he has personally examined microscopically not less than 300 specimens from lesions suspected to be syphilitic, gonorrheal or chancroidal, and is competent to conduct such examinations.

The possession of the appropriate qualifications is unnecessary in the case of any person who has, prior to April 1, 1930, held a similar appointment with the approval of the M. of H. The Minister may dispense with any of the requirements of the Regulations in any case in which it appears to him desirable to do so, on such terms and conditions as he thinks fit, and such dispensation may be given at any time provided that the Minister is satisfied that the interests of any person will not be prejudiced thereby. Otherwise a person may not be appointed as a venereal diseases officer or a venereal diseases pathologist unless his qualifications are in accordance with the Regulations. [793]

Treatment of Seamen.—The Brussels Agreement, 1924 (i), which was ratified by Great Britain in 1925, provides—

(1) For the establishment of venereal diseases centres in all the chief sea and river ports; (2) for medical treatment, including in-patient treatment, to be given gratuitously to seamen without distinction of nationality; and (3) for the supply to patients of a personal card containing information as to diagnosis and clinical particulars, treatment carried out at the centre, and results of serological examination in syphilis.

The M. of H. has arranged accordingly for treatment centres to be available for seamen at some fifty ports in England and Wales, those being provided by the various local authorities.

It is the duty of the port sanitary officer when he hails a ship, or on the occasion of his first visit on board, to furnish printed information to merchant seamen as to facilities for treatment.

The M. of H. pay grants in aid of the expenses of port health authorities in performing such duties. [794]

London.—See title HOSPITAL SERVICE (LONDON).

The L.C.C. ensures that all facilities for treatment are made known by co-operation with the British Social Hygiene Council to whom the L.C.C. makes a substantial grant annually for publicity and propaganda. [795]

(i) Treaty Series (1926), No. 20.

VENTILATION

See BUILDING BYE-LAWS.

VERMIN

See MUSK RATS ; RATS AND MICE.

VERMINOUS ARTICLES, HOUSES, PERSONS, PREMISES

See DISINFECTION.

VESTRIES

See also title PARISH.

Before the passing of the L.G.A., 1894 (*a*), the only parochial organisation for purposes of both civil and ecclesiastical government lay in the assemblage called the "vestry." This was either a "common" or a "select" vestry. Executive functions remained largely in the hands of the churchwardens.

The open or common vestry of a civil parish consisted of a meeting of the inhabitants of the parish, convened by notice, to consider such parish business as might be specified in the notice. The right to be present and the proceedings at meetings of the vestry were regulated by the Vestries Acts, 1818, 1819 and 1853 (*b*). These Acts applied to all parishes, townships, villis and places having separate overseers of the poor, and to all meetings which might by law be held of the inhabitants thereof (*c*).

A select vestry could be appointed for any parish with not less than 800 inhabitants, where the Vestries Act, 1831 (*d*), more commonly known as Hobhouse's Act, had been applied. The select vestry was representative. The members were elected by ballot and retired by thirds annually. Some few parishes possessed select vestries which had been established by custom or under local Acts.

Vestry meetings or meetings in the nature of vestry meetings are held for ecclesiastical parishes, but the above-named Acts did not apply to the vestries of ecclesiastical parishes which were not civil parishes. This title is concerned only with the vestries of civil parishes and their functions as such.

The vestry of the civil parish exerted an important power of control over the expenditure of the parish officers in the relief of the poor, but the creation of the boards of guardians resulted in the almost complete elimination of this control.

In rural parishes (*e*) the powers of the vestry in regard to civil

(*a*) 10 Halsbury's Statutes 773.

(*b*) 6 Halsbury's Statutes 105, 108 and 138.

(*c*) Vestries Act, 1818, s. 7 ; 6 Halsbury's Statutes 107.

(*d*) *Ibid.*, 109.

(*e*) A rural parish is a parish within the district of a R.D.C.

matters were practically extinguished by the L.G.A., 1894. Under that Act, where a rural parish had a parish council, the powers, duties and liabilities of the vestry—except so far as they related to the affairs of the church or to ecclesiastical charities, and except any power, duty or liability transferred by that Act to any other authority—were transferred to the parish council (*f*). Where the population of the parish was too small to give a right to the parish to elect a parish council, the powers, duties and liabilities of the vestry, with the exceptions specified above, were transferred to the parish meeting (*g*).

In the case of an urban parish (*h*) the powers, duties and liabilities of the vestry could be transferred, and were in fact transferred in many cases, to the town council or urban district council, by an order of the Local Government Board made in pursuance of sect. 33 or 34 of the Act of 1894 (*i*). In some boroughs and urban districts the civil powers of the vestry were transferred to the council by a local Act. In the absence of any such order or local Act the vestry retained their powers, duties and liabilities in relation to civil affairs, as before the passing of the Act of 1894.

As regards urban parishes in Wales and Monmouthshire, the Welsh Church Act, 1914 (*k*), transferred the civil functions of the vestries of those parishes (including the functions which in rural parishes had been transferred to the parish council or the parish meeting) to the council of the borough or urban district in which the parish was situate. Thus all vestries in Wales and Monmouthshire have been deprived of their civil functions and powers.

Before the L.G.A., 1933 (*l*), no such similar general transfer of their functions and powers had been made in the case of the vestries of urban parishes in England. At that date the only civil powers of vestries still generally existing in urban parishes were the following : (*m*)

(a) The power of adopting the Burial Acts, 1852 to 1906 (*n*).

(b) Where the Burial Acts had not been adopted for an urban parish, the power of directing the provision of a mortuary for the parish, under the Burial Act, 1852 (*o*).

(c) In a parish with a population of over 2,000, the power of consenting to the provision of a vestry room, and the raising of a loan for that purpose.

(d) In a parish with a population of over 4,000, the power of consenting to the provision of a parochial office, or of a depository for parish documents.

(e) The power of giving directions as to the custody of parish documents.

(f) The right to have laid before them the accounts of all parochial charities and to appoint trustees or beneficiaries of charities where the power of appointment is conferred on the vestry by the trust deed.

(f) L.G.A., 1894, s. 6 (1) ; 10 Halsbury's Statutes 778.

(g) *Ibid.*, s. 19 (4) ; *ibid.*, 790.

(h) An urban parish is a parish situate in a borough or in the district of an U.D.C.

(i) 10 Halsbury's Statutes 798.

(k) S. 25 (1) ; 6 Halsbury's Statutes 1180.

(l) 26 Halsbury's Statutes 295.

(m) Local Government and Public Health Consolidation Committee : Interim Report (p. 15) (Cmd. 4272).

(n) 2 Halsbury's Statutes 190—253.

(o) S. 42 ; 2 Halsbury's Statutes 204.

Acting on the recommendations of the Local Government and Public Health Consolidation Committee (*p*), the L.G.A., 1933, provided, by sect. 269 (*g*), for the transfer (in all cases where this had not been effected under earlier legislation) to the council of every borough or urban district of the functions and liabilities of the vestry, or of any meeting of inhabitants in the nature of a vestry, of every parish or place within the borough or district, except so far as they related to the affairs of the Church or to charities, and also of the functions and liabilities of the churchwardens of every such parish, except so far as they related to the affairs of the Church or to charities.

Summarising the general position, the civil functions and powers of the vestry have been transferred in rural parishes to the parish council or parish meeting, as the case may be, and in urban parishes to the council of the borough or urban district. Hence vestries now remain in existence for ecclesiastical purposes only. Even these purposes are few in number, the bulk of them having been transferred to the parochial church councils and meetings by the Parochial Church Councils (Powers) Measure, 1921 (*r*). [796]

London.—Under the London Government Act, 1899, the vestries were abolished, and subject to the provisions of the Act and to schemes made thereunder, their powers and duties were transferred to the Metropolitan Borough Councils created under the Act. The contribution, proceedings, elections, etc., of the Metropolitan Borough Councils are now regulated generally by the London Government Act, 1939 (*s*), sewerage and other functions are dealt with by the P.H. (London) Act, 1936 (*t*). [797]

- (*p*) See note (*m*), p. 374, *ante*.
 (*q*) 26 Halsbury's Statutes 449.
 (*r*) S. 4; 6 Halsbury's Statutes 74.
 (*s*) 32 Halsbury's Statutes 259.
 (*t*) 30 Halsbury's Statutes 437.

VETERINARY INSPECTOR

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THE DISEASES OF ANIMALS ACTS, 1894-1937 - - - - -	376	THE RIDING ESTABLISHMENTS ACT, 1939 - - - - -	378

General.—The employment by Government departments (other than the Defence departments) and by local authorities of veterinary officers falls normally under four heads, namely (1) employment as veterinary inspectors for the purposes of the Diseases of Animals Acts, 1894-1937 (*a*); (2) employment as veterinary inspectors or veterinary surgeons for the purposes of the Food and Drugs Act, 1938 (*b*); (3) for the purposes of the Riding Establishments Act, 1939 (*c*); and

- (*a*) 1 Halsbury's Statutes 389 *et seq.*; 28 Halsbury's Statutes 7 *et seq.*; 30 Halsbury's Statutes 93 *et seq.*
 (*b*) 31 Halsbury's Statutes 249.
 (*c*) 32 Halsbury's Statutes 84.

(4) occasionally, in conjunction with the sanitary inspectorate, for the inspection of slaughter-houses and of meat intended for human consumption. The M. of A. appoints whole-time and part-time veterinary officers and veterinary inspectors for the purposes of the Diseases of Animals Acts, 1894–1937, and for the supervision of dairy cattle. A few veterinary officers, both of the M. of A. and of local authorities, are engaged in research, instruction, and advisory duties in connection with agricultural education. [798]

The Diseases of Animals Acts.—Sect. 35 (2) of the Diseases of Animals Act, 1894 (*d*), required every local authority, entrusted with the execution of the Diseases of Animals Acts, to keep appointed at all times at least one veterinary inspector, and to appoint so many other veterinary inspectors as the M. of A., having regard to the extent and circumstances of the district of the local authority, directed. As to these authorities, see title DISEASES OF ANIMALS. The qualification of a veterinary inspector is that he shall be a member of the Royal College of Veterinary Surgeons, or shall be a veterinary practitioner qualified as approved by the M. of A. (*e*). The standing approval (in England and Wales), apart from membership of the Royal College of Veterinary Surgeons, is that the inspector is registered as an existing practitioner under sect. 15 of the Veterinary Surgeons Act, 1881 (*f*), or that previous to May 10, 1888, he was employed by the local authority concerned as an inspector or veterinary adviser under the Contagious Diseases (Animals) Act, 1869 (Animals (Miscellaneous Provisions) Order, 1927 (Art. 11)).

Sect. 19 of the Agriculture Act, 1937 (*g*), drastically altered the position of veterinary inspectors by providing that, as from the commencement of Part IV. of the Act of 1937 (*i.e.* April 1, 1938) (*h*), the functions of veterinary inspectors under the Diseases of Animals Acts, 1894 to 1935 (now 1894 to 1937), and under any enactments relating to milk or to dairies, and under any arrangements made under sect. 9 of the Milk Act, 1934 (*i*), shall be discharged by veterinary inspectors appointed by the M. of A., and in accordance with directions given by him. The power of appointing and paying inspectors is contained in sect. 5 of the Board of Agriculture Act, 1889 (*k*). The provisions of any enactment relating to such functions shall have effect accordingly, and the duty of appointing veterinary inspectors formerly imposed on local authorities by sect. 35 (2) of the Act of 1894 has disappeared with the repeal of that sub-sect. by the Act of 1937.

By sect. 19 (2) the Act of 1937 (*l*) transferred to the M. of A. the veterinary staff of other Government departments who were engaged on duties in connection with the matters noted above.

The M. of A. is required by sect. 19 (3) of the Act of 1937 (*l*), to make arrangements, with the approval of the Treasury, to enable local authorities to discharge their functions in relation to public health by

(*d*) 1 Halsbury's Statutes 408.

(*e*) *Ibid.*, s. 59 (1); 1 Halsbury's Statutes 420.

(*f*) 11 Halsbury's Statutes 713.

(*g*) 30 Halsbury's Statutes 61.

(*h*) See S.R. & O., 1938, No. 506.

(*i*) Repealed by the Agriculture Act, 1937, s. 20 (4); 30 Halsbury's Statutes 62, and re-enacted with modifications in Foods and Drugs Act, 1938, s. 21.

(*k*) 3 Halsbury's Statutes 402.

(*l*) 30 Halsbury's Statutes 61.

placing at their disposal the services of veterinary inspectors; such arrangements must include provision for the procedure by which such services are to be applied for, and generally as to co-operation between veterinary inspectors and officers of local authorities in relation to public health functions. Fees may be charged against local authorities for the services of veterinary inspectors on public health duties, as determined by the M. of A. with the approval of the Treasury (1937, sect. 19 (3), (4)), but in practice fees are not demanded.

In order to complete the transfer of functions under the Diseases of Animals Acts, 1894 to 1937, the Animals (Miscellaneous Provisions) Order of 1938(*n*), provides that in any Order made by the Minister under the Acts of 1894 to 1937, references to a veterinary inspector of a local authority shall be construed as references to a veterinary inspector appointed by the Minister, and the term "veterinary inspector" in any such Orders is to be deemed to be defined accordingly, subject to savings for certain Orders relating to the importation of animals. Shortly after the commencement of Part IV. of the Act of 1937, the principal Orders relating to diseases of animals were revised to accord with the then new veterinary arrangements (*o*). In general, each area controlled by a Divisional Veterinary Inspector of the Ministry is coterminous with the districts of one or more local authorities under the Diseases of Animals Acts, and in practice the inspectors and other officers of the local authority work in direct contact with the appropriate Divisional Veterinary Inspector.

As it was obvious that the passing of the Act of 1937 would result in the employment by the M. of A. of a number of veterinary inspectors formerly in the employment of local authorities, sect. 26 of the Act of 1937 (*p*) safeguarded the superannuation rights of such inspectors by applying to the employing local authority (where necessary) the Local Government and Civil Service (Superannuation) Rules, 1936; provision is made by the same section for the protection of veterinary inspectors, transferred from local authorities, who, if they had remained in local government service, would have become superannuable compulsorily under the Local Government Superannuation Act, 1937 (*q*).
[799]

The Food and Drugs Act, 1938. (*a*) *Milk*.—This consolidating and amending statute repealed the Milk and Dairies (Consolidation) Act, 1915, and the Milk and Dairies (Amendment) Act, 1922; the provisions of the Milk and Dairies Order, 1926 (*r*), conferring on certain local authorities functions in relation to the veterinary inspection of dairy cattle had already been repealed by the Milk and Dairies (Amendment) Order, 1938 (*s*), in consequence of the transfer of the functions of veterinary inspectors to officers of the M. of A. under sect. 19 of the Agriculture Act, 1937 (see p. 376, *ante*), and similarly the Milk (Special Designations) Order, 1936 (*t*), was amended by the Milk (Special Designations) (Amendment) Order, 1938 (*u*), so as to provide that the

(*n*) S.R. & O., 1938, No. 197.

(*o*) For these Orders, see the "Handbook of Acts and Orders relating to Diseases of Animals," issued by H.M.S.O.

(*p*) 80 Halsbury's Statutes 64.

(*q*) *Ibid.*, 385.

(*r*) S.R. & O., 1926, No. 821.

(*s*) S.R. & O., 1938, No. 217.

(*t*) S.R. & O., 1936, No. 356.

(*u*) S.R. & O., 1938, No. 218.

veterinary inspections under the Order shall be carried out by veterinary inspectors of the M. of A. & F. For certain purposes under the Milk (Special Designations) Order a certificate given by a private veterinary surgeon may be submitted to a local authority; Art. 2 (1) of the Order of 1936 (as amended by the Order of 1938) defines a "private veterinary surgeon" as a veterinary surgeon approved by the licensing authority; he is not, however, an officer of, nor is he remunerated by, the licensing authority.

The functions under the Food and Drugs Act, 1938, in respect whereof a local authority may require the assistance of a veterinary inspector of the M. of A. & F. are:

- (i.) In the administration of sect. 25 of the Act, which prohibits the sale for human consumption or the use in manufacture of products for human consumption of milk from cows suffering from tuberculosis in certain forms, or from any of the diseases specified in the First Schedule to the Act, or in Art. 11 of the Milk and Dairies Order, 1926.
- (ii.) In the administration of Regulations made under sects. 20 and 21 of the Act (a).

(b) *Foods other than Milk*.—The position of veterinary surgeons, who are employed by local authorities as meat inspectors, is recognised by sect. 100 (1) of the Food and Drugs Act, 1938, which provides that any member of the Royal College of Veterinary Surgeons employed by the council for the inspection of food shall be deemed to be an authorised officer for the purpose of the examination and seizure of meat under the provisions of the Act relating to unsound food; also authorisation to examine and seize meat is restricted to the M.O.H., a sanitary inspector, or a member of the Royal College of Veterinary Surgeons employed as aforesaid. [800]

The Riding Establishments Act, 1939 (b).—This Act empowers local authorities to authorise any duly registered veterinary surgeon to inspect any premises which the local authority have reason to believe are used as a riding establishment, and the horses therein. The veterinary surgeon may be paid a reasonable fee therefor by the local authority (sect. 1). "Local authority" is defined by sect. 3 of the Act as:

- (i.) in the City of London, the Common Council, and a . respects the remainder of the administrative County of London, the L.C.C.
- (ii.) county borough councils, and non-county borough and U.D.Cs. whose area has a population according to the last-published census for the time being, of 20,000 or more;
- (iii.) elsewhere, the county council.

A riding establishment means any stables or other premises at which horses are kept for the purpose of being let out on hire for riding or of being used in providing instruction in riding in return for payment (c). "Horse" includes "ass."

The veterinary surgeon's right of entry is conditional on the production of his authority, if required, and wilfully obstructing or delaying

(a) The regulations at present in force are the Milk and Dairies, and Milk (Special Designation) Orders, noted above, which were continued in force by s. 101 (3) of the Food and Drugs Act, 1938.

(b) 32 Halsbury's Statutes 84.

(c) Establishments used solely for military or police purposes, or by the Zoological Society of London, are excluded.

the veterinary surgeon in the exercise of his powers of entry or inspection is an offence (d), as is concealing a horse with intent to avoid inspection (sect. 2). The Act enables a local authority to prosecute in respect of the hiring out, using or keeping of unfit horses, but by sect. 2 (2) no prosecution shall be brought unless the local authority have received and considered such a report from a duly registered veterinary surgeon as the local authority think appropriate in the circumstances of the case. The reception and consideration of the report may be proved by a document purporting to be signed by an officer of the local authority, who purports to have authority to sign the document. [801]

(d) Punishable on summary conviction by a fine not exceeding £25 for a first offence and not exceeding £50 for a subsequent offence.

VICE-CHAIRMAN OF COUNTY COUNCIL

See CHAIRMAN OF COUNTY COUNCIL.

OF RURAL DISTRICT COUNCIL

See CHAIRMAN OF RURAL DISTRICT COUNCIL.

OF URBAN DISTRICT COUNCIL

See CHAIRMAN OF URBAN DISTRICT COUNCIL.

VILLAGE GREENS

See also titles : COMMONS ;
PARISH MEETING.

A village green has been described by an eminent authority as "a small open space covered with turf, traversed generally by one or two footpaths, usually surrounded or crossed by roads, and lying in the midst or on the outskirts of a rural village" (e).

There are at least three types of village green, from the legal point of view. First, the village green may be a "green" in respect of which the inhabitants of the village or parish have acquired by usage from time immemorial the right to use the land for games and recreation. Secondly, it may be land allotted by an Inclosure Award to the churchwardens and overseers of the parish (now the parish council or the parish meeting where there is no parish council) for the recreation of the

(e) "The Preservation of Open Spaces and of Footpaths," by Sir Robert Hunter 2nd ed., 1902, p. 205.

inhabitants, or for gathering fuel or for "field gardens." Thirdly, it may consist of the "waste of the Manor." The "green" in these latter cases is really "common" land, and as such it may be subject in theory to certain vague indeterminate rights of the "commoners." In the last case, the soil remains vested in the Lord of the Manor, unless it has been acquired by the parish council. The "commoners'" rights in general may have become obsolete, and the land by custom and usage may be subject to the prescriptive rights of the inhabitants to use it for purposes of games and recreation (a).

It is of the very nature of a village green, in the legal sense of the expression, that it should be used for purposes of recreation by the inhabitants of the village or parish. In an old case (b) which has since governed all claims to a right of recreation on village greens, a prescription that all inhabitants of the vill, that is, the village or parish, time out of memory had used to dance in another's "close" at all times of the year at their free will, was held to be a good custom. But a similar custom for all persons for the time being in the parish to play at all kinds of lawful games in the "close" of another was held to be bad (c). A right of recreation by custom upon the land of another cannot exist in the public generally, but must be confined to the inhabitants of a particular district (d).

"Town greens" are mentioned in several Acts of Parliament in conjunction with "village greens." In neither case is the expression defined in these Acts, and there is no distinction in law between the two kinds of green.

The Inclosure Act of 1845 (e), prohibited the enclosure of village greens, and provided that upon any enclosure of a common by virtue of that Act part of the lands to be enclosed may be appropriated as a place of exercise and recreation for the inhabitants of the parish and neighbourhood.

The holding or management of the village green, which formerly rested with the churchwardens and overseers of the parish, was transferred by the L.G.A., 1894 (f), to the parish council, or, in the case of a parish without a parish council, to the chairman of the parish meeting and the overseers. The ownership in the latter case now vests in the "representative body" of the parish (g). Sect. 12 of the Inclosure Act, 1857 (h), as supplemented by sect. 29 of the Commons Act, 1876 (i), provide that if any person wilfully causes any injury or damage to any fence of a town or village green or of any land awarded upon any enclosure under the Inclosure Acts as a place for exercise or recreation; or wilfully and without lawful authority leads or drives any cattle or animal thereon, or wilfully lays any manure, soil, ashes or rubbish, or other matter or thing thereon; or encroaches upon it or does any act whatsoever to its injury or to the interruption of its use or enjoyment as a place of exercise or recreation, he is liable, on summary conviction, upon the information of the parish council or the parish meeting, as the

(a) As to the regulation of commons and restrictions on their enclosure, see title COMMONS in Vol. III.

(b) *Abbot v. Weekly* (1665), 1 Lev. 176; 17 Digest 17, 160.

(c) *Fitch v. Rawling* (1795), 2 Hy. Bl. 398; 17 Digest 17, 162.

(d) *Bourke v. Davis* (1889), 44 Ch. D. 110; 17 Digest 17, 164.

(e) Ss. 15 and 78; 2 Halsbury's Statutes 447, 474.

(f) Ss. 6 (1) (c) (iii.); 19 (6); 10 Halsbury's Statutes 778.

(g) See title PARISH PROPERTY.

(h) 2 Halsbury's Statutes 560.

(i) *Ibid.*, 596.

case may be, or of any inhabitant of the parish, or of the owner of the soil, to a penalty over and above the damage caused, not exceeding 40 shillings.

Further powers are given to the parish council by the L.G.A., 1894 (*k*), with respect to "any recreation ground," village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed. That provision confers on the parish council the powers which may be exercised by an urban authority under sect. 164 of the P.H.A., 1875 (*l*), or sect. 44 of the P.H.A., 1890 (*m*), in relation to recreation grounds or public walks. These powers include the power to make bye-laws for the regulation of the village green, subject to confirmation by the M. of H.

Where on any open land the inhabitants of a village or parish have from time immemorial been accustomed to play games, such custom practically constitutes the land a village green, and the inhabitants cannot lawfully be deprived, by enclosure or otherwise, of their right so to use it. In such a case, where any attempt is made to injure the green, or to interrupt its use as a place of exercise and recreation, the parish council may proceed against the person committing such act before the justices, and such person, if convicted, is liable to damages and penalties (*n*).

Not infrequently a village green, a recreation ground, or a fuel allotment has been allotted under some enclosure award to the churchwardens and overseers of a parish. Where this has been the case, such land will henceforth be vested in and managed by the parish council (*o*).

A fuel allotment may be made available for purposes of recreation by a scheme of the Charity Commissioners, on the application of a parish council, when they are the trustees of the allotment (*p*).

Where there is no parish council the village green, or other recreation ground, vests in the "representative body" of the parish (*q*), and the county council have the power of conferring on the parish meeting the right to make bye-laws in respect of it (*r*).

With respect to any village green, recreation ground, open space, or public walk for the time being under the control of the parish council, the council may make bye-laws for its regulation (*s*). [802]

London.—The Corporation of London (Open Spaces) Act, 1878 (*t*) sect. 4, empowers the City corporation to acquire open spaces not within the Metropolis but within 25 miles of the City boundaries and to make agreements for preserving rights over such spaces. The lands include (sect. 2) village greens and other lands within the definition contained in sect. 11 of the Inclosure Act, 1845 (*u*). Under the Metropolitan Commons Act, 1878 (*v*), the L.C.C. have the same power to purchase, with a view to prevent the extinction of rights of common, any saleable rights of common, as is conferred on an urban district in respect of a suburban common. [803]

(*k*) S. 8 (1) (d); 10 Halsbury's Statutes 780.

(*l*) 18 Halsbury's Statutes 693.

(*m*) *Ibid.*, 841.

(*n*) Inclosure Act, 1857, s. 12, extended by Commons Act, 1876, s. 29, and applied to parish councils by the L.G.A., 1894, ss. 6 (1) (c) (iii.), 19 (6).

(*o*) L.G.A., 1894, ss. 5 (2) (c) and 6 (1) (c) (iii.).

(*p*) Commons Act, 1876, s. 19; 2 Halsbury's Statutes 594.

(*q*) See title PARISH PROPERTY.

(*r*) L.G.A., 1933, s. 273.

(*s*) L.G.A., 1894, s. 8 (1) (d) and P.H.A., 1875, ss. 164 and 183—186.

(*t*) 41 & 42 Vict. c. cxxvii.

(*u*) 2 Halsbury's Statutes 443.

(*v*) 11 Halsbury's Statutes 602.

VILLAGE PUMPS, ETC.

See also title : WATER SUPPLY.

All public pumps, wells, cisterns, reservoirs, conduits and other works used for the gratuitous supply of water for the inhabitants of any part of the district of a local authority, vest in and are under the control of the local authority; and the authority may cause the works to be maintained and supplied with wholesome water, or may substitute, maintain and supply with wholesome water other such works equally convenient (a).

A well situated on private ground may be "public" within the meaning of the provision referred to if a right to use it has been acquired by those members of the general public living within its reach (b). The user must have been "gratuitous"; but the fact that persons interested have at times subscribed small sums for repairing the well or pump does not necessarily prevent the user being "gratuitous" (c).

A natural pond, long used for watering horses, is a "reservoir" within this provision (d), and a stone trough supplied by a spring a little distance away was held to be either a "well" or a "reservoir" (e).

The power to "supply" water to pumps, wells, cisterns, etc., does not justify an authority in trespassing on private property and taking water therefrom without leave (f).

In the case of additional works as distinguished from substituted works, the authority before providing water gratuitously, must obtain the consent of any water company supplying the district.

The effect of the provision as to "vesting" is to enable the local authority to bring an action in their own name for damages in respect of any interference with the well itself; but any action for damages for interfering with public access to the well must be brought in the name of the Attorney-General (h).

A parish council has no power to bring an action on behalf of the inhabitants of the parish, even for the purpose of restraining interference with a pump properly erected by the council in the exercise of their powers (i).

If the local authority are satisfied that any works for the gratuitous supply of water for the inhabitants are no longer required, or that the water obtained from such works is polluted, and that it is not reason-

(a) P.H.A., 1936, s. 124 (1); 29 Halsbury's Statutes 414.

(b) *Smith v. Archibald* (1880), 5 App. Cas. 489; 19 Digest 162, 1134.

(c) *A.-G. v. Tonkin* (1901), 18 T. L. R. 29; 43 Digest 1065, 55.

(d) *Leadgate Local Board v. Bland* (1881), 45 J. P. 526.

(e) *Holmfirth Local Board v. Shore* (1895), 59 J. P. 344; 43 Digest 1065, 56.

(f) *Edwards v. Jolliffe*, [1877] W. N. 120; 43 Digest 1066, 58.

(h) *Holmfirth Local Board v. Shore*, *supra*.

(i) *Stoke Parish Council v. Price*, [1899] 2 Ch. 277; 63 J. P. 502; 33 Digest 34, 182.

ably practicable to remedy the cause of the pollution, they may close the works or restrict the use of the water obtained therefrom (*k*).

The local authority are precluded from recovering a water rate in respect of a water supply from a "standpipe, well or cistern vested in them, or constructed by them, for the gratuitous supply of water to the inhabitants of any part of their district" (*l*).

A parish council may utilise any well, spring or stream within their parish, and provide facilities for obtaining water therefrom, and they may execute any works, including works of maintenance or improvement, incidental to or consequential on the exercise of this power (*m*). This provision does not authorise the parish council to interfere with the rights of any person, nor does it restrict, in the case of a public well or other works, any powers of the R.D.C. under the provision first above referred to (*n*).

Works of any magnitude, such as laying a water main, or the construction of a reservoir, would not seem to be within the powers of a parish council. These matters are within the province of the R.D.C., who have also the requisite powers for taking up streets and charging water rates.

A parish council may contribute towards the expenses incurred by any other parish council in the exercise of their powers as above described (*n*). [804]

(*k*) P.H.A., 1936, s. 124 (2); 29 Halsbury's Statutes 414.

(*l*) *Ibid.*, s. 128 (2); *ibid.*, 417.

(*m*) *Ibid.*, s. 125 (1); *ibid.*, 415.

(*n*) *Ibid.*, s. 125 (2); *ibid.*

VISITING COMMITTEES

See HOSPITAL AUTHORITIES; LICENSED HOUSES AND HOSPITALS;
MENTAL HOSPITALS.

VOLUNTARY FIRE BRIGADES

See FIRE PROTECTION.

VOLUNTARY HOSPITALS AND INSTITUTIONS

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*See also titles : HOSPITALS ;
TUBERCULOSIS.*

The Relation of Local Authorities to Voluntary Organisations.—Up to the close of last century, the trend of public health legislation had been directed towards an attempt to remove or mitigate influences recognised as leading to disease, such as impure water, unsound food, overcrowding, defective draining and paving, etc. In the early years of the twentieth century a new tendency began to make its appearance in public health legislation, namely, the introduction of positive measures actively designed for the promotion of the health of the individual. It came to be recognised, moreover, that the protection of the community from certain diseases (*e.g.* tuberculosis or venereal disease) could only be accomplished if infected individuals likely to spread infection were sought out and effectively treated; and that certain afflictions could only be avoided by the treatment of precursive disease (*e.g.* blindness and ophthalmia neonatorum). A number of services for promoting the health of the individual have thus come into being, such as the school medical service (1907); the public treatment of tuberculosis (1912); treatment of venereal diseases (1917); the maternity and child welfare service (1918); treatment of ophthalmia neonatorum (1926); treatment of puerperal pyrexia (1926); and, arising out of the L.G.A., 1929, the treatment in municipal hospitals of all forms of sickness. Until the introduction of health and social services of this kind placed responsibilities upon local authorities, the public treatment of the sick and the care of the afflicted were, save for work done by boards of guardians, entirely in the hands of voluntary organisations.

The voluntary hospitals and institutions of this country, many of which have their foundations in the monastic orders of the middle ages, are deservedly held in high esteem by public opinion; and it has been the usual policy of the government of the day, when introducing

legislation to promote new health or social services, to safeguard the position of voluntary organisations already engaged in similar work. Circulars issued by the Local Government Board and later by the M. of H. in explanation of new health legislation have repeatedly suggested to local authorities the desirability of utilising existing voluntary agencies in the organisation of certain public health services. It is a very usual practice, therefore, for a local authority to discharge its obligation to provide a health service by employing a voluntary body to act as its agent in this behalf. The agreement between the two parties may provide for a certain service to be carried out by a voluntary agency, to the satisfaction of the local authority, in consideration of an annual subscription or a *per capita* payment. The scope of some of these arrangements is indicated in the sections which follow. [805]

Agreements with Voluntary Hospitals.—In many provincial towns, the voluntary hospital is the centre of all medical work in the area, and by agreement may undertake on behalf of the local authority a number of public health activities in connection with certain of the authority's schemes, such as the following :

Maternity and Child Welfare (a).—The provision of (1) maternity beds for women referred to hospital for their confinement by a medical officer of the local authority on account of medical considerations or unsatisfactory home conditions ; and (2) beds for the treatment of disorders of pregnancy or of the puerperium, and diseases of infants and young children (including ophthalmia neonatorum). The general approval of the M. of H. to these arrangements is required (b). [806]

Venereal Diseases.—The provision of (1) a clinic for the out-patient examination and treatment of persons suffering, or suspected to be suffering, from venereal diseases ; (2) hospital beds for cases which need in-patient treatment ; and (3) facilities for the examination in a laboratory of pathological specimens submitted from the clinic or from private medical practitioners. Details of the agreement between the hospital and the local authority need to be approved by the M. of H. before any expenditure is incurred (c). Amendment of any agreement already approved, however, whereby an extension of facilities for diagnosis or treatment at an approved hospital or laboratory is provided, requires no further approval from the M. of H. (d). [807]

Treatment of Tuberculosis (e).—Occasionally a tuberculosis dispensary is established and staffed by a voluntary hospital on behalf of a local authority. County councils and county borough councils frequently arrange institutional treatment for persons suffering from tuberculosis by sending them to general or special voluntary hospitals or sanatoria and paying for them the actual cost of maintenance. Hospitals, sanatoria and dispensaries, to which patients are systematically sent for treatment by a county council or county borough council under its scheme for the treatment of tuberculosis, need to be approved by the M. of H. (f). It is understood, however, that a county council or county borough council is not precluded from occasionally

(a) Circ. M. & C. W. 4, August, 1918, issued by the President of the Local Government Board.

(b) P.H.A., 1936, s. 204 (1) ; 29 Halsbury's Statutes 463.

(c) P.H. (Venereal Diseases) Regs., 1916, Art. 3.

(d) M. of H. Circ. No. 1072, para. 11.

(e) See title TUBERCULOSIS.

(f) P.H.A., 1936, s. 171 ; 29 Halsbury's Statutes 443.

maintaining a tuberculous patient in a voluntary hospital or institution not approved by the M. of H. [808]

School Medical Service.—It is a common practice for a local education authority to enter into an agreement with a voluntary hospital for carrying out the operative treatment of diseased tonsils and adenoids. The arrangements must be such as are sanctioned by the Board of Education (*g*), and it is the policy of the Board to require full details, including the names and qualifications of the surgeons performing the operation, before granting approval. Agreements between voluntary hospitals and local education authorities may also be made to cover such medical services as the ophthalmic examination of school children and the X-ray treatment of ringworm. [809]

The Poor Law.—A county council or county borough council, as poor law authority, may discharge certain of its obligations to the sick poor of its area by arrangement with a voluntary hospital. For example, in an area where facilities in the poor law institution are inadequate for dealing with acute medical cases or surgical emergencies, a voluntary hospital may, subject to the approval of the M. of H., contract with the council to admit such cases on the request of the medical officer or master of the institution or of a relieving officer. In return for this service the council is empowered to make to the hospital an annual subscription (*h*), the amount of which may be calculated upon the basis of work done. [810]

District Nursing Associations.—It will be convenient to consider the relation of district nursing associations to local authorities in connection with the several health services undertaken by these bodies.

Domiciliary Midwifery.—In framing its proposals for setting up a domiciliary midwifery service in accordance with the terms of the Midwives Act, 1936 (*i*), a local supervising authority is obliged to consult with all the voluntary organisations carrying out, or willing to carry out, domiciliary midwifery in the area (*j*). Moreover, any such voluntary organisation not included in a local supervising authority's proposals, or dissatisfied with the arrangements proposed to be made, is given the right to make representations to the M. of H.; and the Minister, in the light of representations made, is given the power to vary the authority's proposals (*k*). In consequence of these powerful safeguards, a very substantial proportion of the domiciliary midwifery service set up by the Act, throughout the country, is being carried out by voluntary nursing associations on behalf of local supervising authorities. Agreements between the parties (which, although not subject to the formal approval of the M. of H., should nevertheless be submitted to the Minister in draft at the same time as the council's proposals for carrying out its duties under the Act (*l*), and may be in accordance with a model form) (*m*), stipulate the conditions under which the voluntary organisation operates, the number of midwives to be employed, the amount and manner of payment made by the authority, the salaries to be paid to midwives, and the fees to be charged to patients. [811]

Maternity and Child Welfare.—A welfare authority may, subject to

(*g*) Board of Education (Special Services) Regns. (S.R. & O., 1925, No. 835), s. 18.

(*h*) Poor Law Act, 1930, s. 67 (*a*); 12 Halsbury's Statutes 1001.

(*i*) 29 Halsbury's Statutes 264.

(*j*) Midwives Act, 1936, s. 1 (2) (*a*) (*i.*); 29 Halsbury's Statutes 265.

(*k*) *Ibid.*, s. 1 (5); *ibid.*, 266.

(*l*) *Ibid.*, s. 1 (3) (*a*); *ibid.*

(*m*) Memo. 200/M.C.W. Appendix.

the general approval of the M. of H. (*n*), enter into agreement with a district nursing association, whereby the association's nurses act as health visitors for the authority. Such an arrangement is of value and is extensively adopted in sparsely populated areas. District nursing associations are also sometimes employed by welfare authorities for the home nursing of expectant and nursing mothers and of young children suffering from such infectious conditions as measles, whooping cough and epidemic diarrhoea (which are particularly dangerous in infancy) and ophthalmia neonatorum. It need hardly be stressed that the nursing of such infections should not be undertaken by nurses engaged also in midwifery or maternity nursing. [812]

Home Nursing of the Sick Poor.—In discharge of its statutory obligations to relieve necessity, a county council or county borough council may make arrangements with a district nursing association for the nursing in their homes of poor people who are sick or infirm and in need of nursing attention. Such an arrangement may be of great benefit both to the individual and to the authority in that it may obviate the need of removing certain cases to hospital or institution, or, alternatively, it may enable sick persons to be discharged from hospital to their homes at an earlier date than would otherwise be possible, so liberating hospital beds. The power thus to employ nursing associations has recently been removed from the Poor Law Act, 1930 (*nn*), and re-enacted in the P.H.A., 1936 (*o*), so that the granting to a person of this form of assistance does not of necessity amount to poor relief [813]

Subscriptions to Voluntary Hospitals and Institutions.—A county council or local authority (*i.e.* the council of a borough, urban district or rural district) (*p*) is empowered (*g*) to make reasonable contributions to voluntary hospitals to an extent not exceeding the sum represented by a rate of one and one-third pence, or such larger amount as the M. of H., in special circumstances, may approve. Upon county and county borough councils rests the statutory duty of relieving the needs of the sick poor. Their obligations are lessened by the services rendered to the same class of the community by voluntary hospitals, and in recognition of the work done by voluntary hospitals for those individuals towards whom poor law authorities have a special responsibility, it is customary for county councils and county borough councils to make contributions to the funds of voluntary hospitals, including cottage hospitals, serving their areas (*r*). Apart, however, from payment by poor law authorities to voluntary hospitals in general recognition of services rendered, it is not unusual for county districts to give donations or subscriptions to local hospitals on the grounds that these institutions provide valuable health services for the inhabitants of the district.

A county council or local authority may contribute by way of an annual subscription to nursing associations (*s*). A county council or county borough council as poor law authority is empowered also to make annual subscriptions (*g*) to hospitals; to institutions for blind, deaf or otherwise afflicted persons, or associations for assisting such persons; to associations for assisting boys and girls in service,

(*n*) P.H.A., 1936, s. 204 (1); 29 Halsbury's Statutes 463.

(*nn*) S. 67 (*c*); 12 Halsbury's Statutes 1002.

(*o*) P.H.A., 1936, s. 178; 29 Halsbury's Statutes 446.

(*p*) *Ibid.*, s. 1 (2); *ibid.*, 322.

(*q*) *Ibid.*, s. 181 (3); *ibid.*, 447.

(*r*) Poor Law Act, 1930, s. 67 (*a*); 12 Halsbury's Statutes 1001.

(*s*) P.H.A., 1936, s. 178; 29 Halsbury's Statutes 446.

or for preventing cruelty to children; or to any other institution which appears to the council, with the approval of the M. of H., likely to render useful aid to the poor. [814]

Grants to Voluntary Organisations.—Prior to the passing of the L.G.A., 1929, certain voluntary organisations providing health services had been in receipt of grants directly from the M. of H. The services rendered by these organisations were for the most part more of a national than a local character and were concerned with maternity and child welfare, the welfare of the blind, the care of mental defectives not in institutions, and the treatment of tuberculosis in Wales and Monmouthshire. On the coming into operation of that Act, direct grants from the M. of H. were discontinued and provision in the Act was made for grants to be payable to the organisations concerned by county councils and county borough councils. [815]

Maternity and Child Welfare.—It is the duty of every county council and county borough council to prepare and submit to the Minister at least six months before the beginning of each fixed grant period a scheme for securing payment of annual contributions by the council to voluntary organisations providing maternity and child welfare services in, or for the benefit of, the county or county borough (t). Under the scheme :

(a) Associations rendering services approved by the Minister immediately before April 1, 1930, are safeguarded inasmuch as they must continue to receive as annual payments from the council not less than a sum determined by the Minister.

(b) Payment may be made to associations, not so approved, which provide services used by the council.

(c) It is laid down to what extent (if any) the services rendered by any voluntary association should be paid for by the council of a county district which is a welfare authority.

Any voluntary organisation is given the right to make representations to the Minister that it proposes to provide or extend maternity and child welfare services in, or for the benefit of, a county or county borough subject to the receipt of contributions (or increased contributions). Thereupon, after consultation with the appropriate council, the Minister may, if he thinks it expedient, amend a council's scheme so as to provide for such payment. [816]

Welfare of the Blind, Mental Defectives and Tuberculous Persons.—Before the beginning of each fixed grant period the Minister, after consultation with the county councils and county borough councils concerned, has the duty of making a scheme providing for payment by the councils of such amounts as he may specify (u) to (a) voluntary associations providing services for the welfare of the blind; (b) voluntary associations assisting or supervising mental defectives not in institutions; (c) the King Edward VII. Welsh National Memorial Association for the treatment of tuberculosis (Wales and Monmouthshire only). [817]

Consultation between Local Authorities and Voluntary Hospitals.—The powers conferred upon county councils and local authorities to provide hospital accommodation for the sick (other than isolation hospital accommodation) have been consolidated and are now contained within the P.H.A., 1936 (a). A county council or local authority

(t) L.G.A., 1929, s. 101; 10 Halsbury's Statutes 946.

(u) *Ibid.*, s. 102; *ibid.*, 948.

(a) P.H.A., 1936, s. 181; 29 Halsbury's Statutes 447.

proposing to exercise these powers and provide hospital accommodation (or additions to existing hospital accommodation), for the treatment of persons suffering from other than infectious diseases, is required, as a preliminary, to consult with a body representative of the governors and medical and surgical staffs of voluntary hospitals serving the area (b). The term "hospital accommodation" in this connection is comprehensive and embraces accommodation both for in-patients and out-patients in hospitals, dispensaries and clinics, and includes maternity beds. The purpose of this consultation is to co-ordinate voluntary and municipal enterprise in an area and so far as practicable avoid waste of public money, whether derived from voluntary subscription or from rates, in competition, and unnecessary duplication of medical services. Consultation affords to voluntary hospitals an opportunity to show that some proposed hospital accommodation might be provided to better advantage in a voluntary rather than a municipal hospital.

The enactment merely imposes upon a local authority the duty of consultation; but, having complied with this requirement, a local authority is not bound to give effect to any recommendations or views which may have been urged by the body representing voluntary hospitals. The M. of H., however, in considering an application by a county council or local authority for power to raise a loan for hospital buildings, requires to be satisfied that consultation has taken place and would doubtless need to be assured that due regard had been paid to reasonable representations or alternative schemes submitted by the voluntary hospitals. [818]

Notes on Practice.—To serve any useful purpose, consultations between authorities and voluntary hospitals should take place as soon as a scheme for new hospital provision or extension is contemplated, when plans are still in a fluid stage and effect may yet be given to any reasonable suggestions submitted. Moreover, to obtain the maximum of benefit, consultations should be arranged not only when an authority has proposals to put forward but also when voluntary hospitals serving the area contemplate extensions to hospital accommodation. Out of the statutory requirement laid upon one of the parties, a helpful measure of co-operation may spring, if mutual exchange of information can be arranged and the body representing the voluntary hospital on its part can be induced to keep the authority informed as to schemes of hospital extension which may be in the mind of its constituent members. With a view to effecting this kind of co-operation, in a number of counties and county boroughs joint consultative committees have been set up, composed of representatives of the authority and of the voluntary hospitals. Proposals for hospital provision whether municipal or voluntary are brought before this joint committee as soon as possible after their inception with a view to facilitating interchange of information and obtaining agreement on general policy. [819]

(b) P.H.A., 1936, s. 182; 29 Halsbury's Statutes 448.

VOLUNTARY SCHOOLS

See NON-PROVIDED SCHOOLS.

VOUCHERS

See AUDIT.

VOTERS

See LOCAL GOVERNMENT ELECTORS.

VOTING PAPERS

See ELECTIONS.

WALLS, PARTY

See BUILDING BYE-LAWS.

WAPENTAKES

See HUNDREDS.

WARDS

See ALTERATION OF WARDS.

WAR MEMORIALS

See MEMORIALS, WAR AND OTHER.

WASHHOUSES

See BATHS AND WASHHOUSES.

WATCH COMMITTEE

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See also titles : CHIEF CONSTABLE;
POLICE;
STANDING JOINT COMMITTEE.

Constitution.—The Watch Committee of a borough is appointed by the borough council pursuant to sect. 190 (1) of the Municipal Corporations Act, 1882, which requires that the borough council shall from time to time appoint a watch committee, consisting of the mayor and a sufficient number (not exceeding one-third) of the members of the council. The term of office of the committee is fixed by the appointing council, but the mayor, who is not included in the number of members appointed to the watch committee by the council, is a member of the watch committee by virtue of his office, and on ceasing to be the mayor, he ceases to be a member of the watch committee, unless appointed thereto by the council, as a member of the council.

By sect. 190 (2) of the Act, the watch committee may act by a majority of those present at a meeting, but shall not act unless three are so present. The borough council may make standing orders under sect. 96 of the L.G.A., 1933, respecting the proceedings and place of meeting of the watch committee, but standing orders made by the borough council which purport to vary the statutory quorum fixed by sect. 190 (2) of the Act of 1882 (*supra*) would be ineffective. Subject to standing orders, the watch committee may regulate their own proceedings, and the person presiding at a meeting of the committee has a second or casting vote (L.G.A., 1933, sect. 96).

The provisions of sect. 76 of the L.G.A., 1933, as to disability for voting on account of interest in contracts, and any standing orders as to exclusion from meetings of members who are under such disability, apply to members of the watch committee. Standing orders as to contracts, made by the council under sect. 266 of the L.G.A., 1933, bind the watch committee. [820]

Relationship with Borough Council.—The effect of sect. 187 of the L.G.A., 1933, combined with the unrepealed portions of sect. 140 of the Municipal Corporations Act, 1882, and of the Fifth Schedule thereto, is that payments out of the general rate fund of the borough, to meet the requirements of the watch committee, can be made only on an order of the council, pursuant to sect. 187 (2) of the L.G.A., 1933, and, to such extent as is necessary to obtain such orders of the council, the proceedings of the watch committee require the confirmation of the council.

There is, however, no obligation to report to the council, or to obtain confirmation of the acts of the watch committee in the exercise of their statutory functions, except so far as is necessary for financial purposes. [821]

Functions with Regard to Borough Police (a).—The primary duty of the watch committee, as set out in sect. 191 of the Municipal Corporations Act, 1882, is to appoint a sufficient number of fit men to be borough constables, to frame regulations governing the borough police force, and to deal with the discipline, pay and pensions of the force (b). With regard to disciplinary action, the regulations made by the H.O. under the Police Act, 1919, do not repeal sect. 26 of the County and Borough Police Act, 1859, and sect. 191 (4) of the Municipal Corporations Act, 1882, and therefore the power of dismissing a borough police officer remains vested in the watch committee alone; also a watch committee in dealing with matters of discipline, particularly where the confirmation or otherwise of a decision of the chief constable is concerned, is performing a quasi-judicial function and must act in accordance with the principles of "natural justice" (c).

The watch committee cannot control the actions of the police in dealing with individual crimes (d), and the conditions under which police grants are paid leave very little discretion to the watch committee in such matters as establishment, rates of pay and the provision of uniform. Similarly the grant system compels the committee, in a large measure, to accept the H.O. standards as to the efficiency of the force.

The watch committee is empowered by sect. 7 of the County and Borough Police Act, 1856, to direct and require borough police officers to perform duties connected with the police, in addition to their ordinary duties (e).

The watch committee is the police authority in the borough for the purposes of the Police Pensions Act, 1921. [822]

Returns.—By sect. 14 of the County and Borough Police Act, 1856, as amended by the Police Returns Act, 1892, the watch committee is required to transmit to the H.O. as soon as may be after the end of each calendar year, a statement of the number of offences reported to the police, the number of persons apprehended, the nature of the charges, the result of the proceedings taken, and such other particulars as to the state of crime in the borough as the committee think it material to furnish.

(a) As to boroughs maintaining borough police forces, see title **BOROUGH POLICE**. As to the formation of new borough police forces, see s. 136 of the L.G.A., 1933 (replacing s. 215 of the Municipal Corporations Act, 1882), which prohibits the establishment of a new borough force not consolidated with the county police force, unless the population of the area which is created a borough, according to the latest census prior to the petition for the charter of incorporation, was 20,000 or upwards. Although the marginal note to s. 136 refers to a new borough, *semble*, this section would preclude the formation of a new separate police force for a borough which had not the requisite population on incorporation at any time prior to the commencement of the L.G.A., 1933, and has since increased its population by extension or by natural increase.

(b) As to these matters, see titles **BOROUGH POLICE**; **POLICE**; **POLICE PENSIONS**; and **SPECIAL CONSTABLES**.

(c) *Cooper v. Wilson*, [1937] 2 K. B. 309, C. A.; Digest (Supp.). And see the Police (Appeals) Act, 1927; 12 Halsbury's Statutes 898.

(d) A constable of the borough police is not the agent of the corporation in exercising police duty (*Fisher v. Oldham Corpn.*, [1930] 2 K. B. 364; Digest (Supp.).

(e) *E.g.* as inspectors under the Diseases of Animals Acts, or Petroleum Inspectors, or Weights and Measures Inspectors.

On January 1, April 1, July 1 and October 1 in each year the watch committee must send to the H.O. a copy of all rules from time to time made for the regulation and guidance of borough constables (Municipal Corporations Act, 1882, sect. 192). [823]

Fire Protection.—The provision of fire protection services was not an original function of the watch committee, but sect. 2 of the Police Act, 1893, empowered a borough council to delegate to the watch committee its powers under sects. 32 and 33 of the Town Police Clauses Act, 1847 (*f*), and where this had been done sect. 2 of the Act of 1893 enabled the watch committee to employ constables wholly or partially as firemen. The Police Act, 1893, was repealed by the Fire Brigades Act, 1938 (sect. 30 and Third Schedule), and sect. 1 (7) of the Act of 1938 provides that where a fire authority, being the council of a borough having a separate police force, delegate to the watch committee their functions under the Act of 1938, the committee may employ the chief officer of police, an assistant chief constable, or the deputy chief constable on administrative duties in connection with a fire brigade maintained by the borough council, and may employ other constables as members of the brigade, but as from July 29, 1943 (*i.e.* five years after the passing of the Act of 1938) no such "other constables" may be employed as part-time members of a fire brigade. As to fire protection and the employment of firemen, see titles FIREMEN; FIRE PROTECTION. [824]

Miscellaneous Functions.—As a matter of administrative convenience, county borough and borough councils not infrequently delegate to the watch committee functions in relation to various forms of licensing, involving the control and supervision of places of entertainment or of public resort (*g*). In such cases the watch committee is not exercising its statutory functions under the Act of 1882, but acts as a committee appointed under sect. 85 of the L.G.A., 1933, and is therefore subject to such restrictions or conditions as may be imposed by the appointing council.

The watch committee as police authority have to administer the House to House Collections Act, 1939 (*h*). [825]

London.—London local authorities do not appoint watch committees. For police powers, see titles METROPOLITAN POLICE and POLICE, CITY OF LONDON. [826]

(*f*) Ss. 32 and 33 of the Town Police Clauses Act, 1847, as applied to urban districts by s. 171 of the P.H.A., 1875, empowered the borough council to provide and maintain fire appliances and to employ firemen; these sections are repealed by the Fire Brigades Act, 1938, which compels "fire authorities" (including county boroughs and boroughs) to make provision for fire services.

(*g*) As to such functions, see titles BETTING; CINEMATOGRAPHS; MUSIC, SINGING AND DANCING; SUNDAY ENTERTAINMENTS; THEATRES.

(*h*) 32 Halsbury's Statutes 110.

WATER SUPPLY

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*See also titles : COMMITTEES ;
JOINT BOARDS.*

The P.H.A., 1848, 1875 and 1936.—The P.H.A., 1848, may be regarded as the foundation of the present law governing water supply by local authorities. This Act created a General Board of Health and either constituted the town council in municipal boroughs a local board of health or set up local boards elected by the ratepayers. It conferred powers to construct waterworks and sink wells and to protect water sources from pollution. The P.H.A., 1875, repealed and consolidated the Act of 1848 and twenty-nine amending Acts. The provisional order procedure for certain purposes under that Act and (for companies) the Gas and Water Works Facilities Act, 1870 (a),

was a procedure founded on provisions in much earlier Acts (*b*). The provisions of the P.H.A., 1875, and subsequent Acts have in their turn been repealed, amended and re-enacted, and are now contained in the P.H.A., 1936 (*c*). [827]

Waterworks Clauses Acts, 1847 and 1863 (*d*).—The Waterworks Clauses Acts, 1847 and 1863, contain the general code which governs the conditions of water supply. The Act of 1847 includes provisions dealing with the construction of waterworks; mining operations in the vicinity of waterworks; breaking up of streets for the laying of mains; obligations to supply water; laying of communication pipes; waste; misuse and fouling of water; water rates; and profits of undertakers. The Act of 1863 includes provisions relating to the security of reservoirs and some amendments of the Act of 1847 relating to the supply, waste and misuse of water.

The Acts are incorporated, with or without modification, in the special Acts and provisional orders of nearly every local authority, joint board or company supplying water under special powers. Their substance is also applied to local authorities operating under the P.H.A., because the P.H.A., 1936, incorporates, by sect. 120 (*e*), the whole of the Waterworks Clauses Act, 1863 (except sect. 15 (*f*)), and with certain modifications the following sections of the Waterworks Clauses Act, 1847: sects. 44 to 47 (*g*), with respect to communication pipes to be laid by undertakers; sects. 48 to 51 and 53 (*h*), with respect to communication pipes to be laid by inhabitants; sects. 54 to 60 (*i*), with respect to waste or misuse of water supplied by undertakers; sects. 61 to 67 (*j*), with respect to provisions for guarding against fouling water of the undertakers; and sects. 68 to 71, 73 and 74 (*k*), with respect to the payment and recovery of water rates.

Since the Acts of 1847 and 1863 were passed, the measure and circumstances of water supplies have greatly changed, but, in the absence of any general revision of the code, it has been left to the individual water undertakers, as opportunity arises, to apply for revision of the code in its application to their undertakings. The result is that special Acts and provisional orders, having been obtained at different times, differ much in their provisions, and the position is far from satisfactory, though at the same time there has grown up a large body of provisions modifying the Waterworks Clauses Acts which are recognised as common form clauses. Some of these have now been introduced into the P.H.A., 1936. [828]

Supply of Water in Bulk Act, 1934 (*l*).—Before this Act, there were no general powers enabling statutory water undertakers, including

(*b*) In more recent Acts for newer services, such as electricity, necessary powers for the establishment and conduct of undertakings may be obtained by special order, that is, an order of the appropriate Minister, which becomes operative on confirmation by resolution in both Houses of Parliament. The method of procedure by special order has not, however, been adopted so far as the P.H.A., 1936, is concerned.

(*c*) 29 Halsbury's Statutes 309.

(*d*) 20 Halsbury's Statutes 186, 220.

(*e*) 29 Halsbury's Statutes 412.

(*f*) 20 Halsbury's Statutes 223.

(*g*) *Ibid.*, 201—202.

(*h*) *Ibid.*, 203—204.

(*i*) *Ibid.*, 204—206.

(*j*) *Ibid.*, 206—208.

(*k*) *Ibid.*, 208—210.

(*l*) 27 Halsbury's Statutes 728.

local authorities, to make agreements with each other for the buying and selling of water in bulk; although a number of local authorities and statutory companies had obtained such powers in special Acts, and under the P.H.A., 1875, a local authority could supply an adjoining local authority. The Act enables agreements to be made, subject to the Minister's approval. Sect. 116 (1) (iv) of the P.H.A., 1936 (*m*), gives power to local authorities to "avail themselves of the provisions of the" Act of 1934. [829]

Statutory Water Companies.—Statutory power for the supply of water by a company is obtained either by special Act or by a provisional order under the Gas and Water Works Facilities Act, 1870 (*n*). By special Acts, water companies acquire compulsory powers to take land and water rights; to construct works; to break up streets for the laying of pipes; to charge rates not exceeding the authorised maxima, based on the value of property; and generally powers to carry on the undertaking. Provision is usually made compelling them to afford a supply of pure and wholesome water, unless prevented by frost, unusual drought, or other unavoidable cause or accident; and their profits are limited.

Companies or private persons (but not local authorities) may apply to the M. of H. for a provisional order under the Gas and Water Works Facilities Act, 1870 (*n*), authorising them to construct and to maintain waterworks and works connected therewith, and to supply water in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works and to supply water; to raise additional capital necessary for the purpose; and to enable two or more companies or persons to enter into agreements for a joint supply, or to amalgamate their undertakings. Powers for the compulsory acquisition of land and (as the Minister is advised) of water rights are excluded from the scope of these provisional orders and can be obtained only by special Act; but, subject to this important qualification, the powers which may be given to companies by provisional order are substantially the same as those which may be given by special Act.

Special Acts and provisional orders obtained by local authorities, joint boards and companies, normally empower only the carrying out of works specified in them and such works as are purely ancillary to them, and confer no general power to carry out works. It is also usual in a special Act or provisional order to prohibit the undertakers from abstracting water except from land and by works specified in that or some other Act or provisional order. Local authorities, water companies and others working under these special powers have therefore to obtain a fresh Act or provisional order when they wish to construct additional works or abstract further water from some new site, or when they wish to extend their limits of supply. [830]

Non-statutory Companies.—Companies and private persons supplying water without statutory authority have no express rights of breaking up public streets. Moreover, they have no powers of levying water rates on the premises supplied by them and the supply of, and payment for, water depends on contract between the supplier and the consumer. [831]

(*m*) 29 Halsbury's Statutes 409.

(*n*) 8 Halsbury's Statutes 1254.

Acquisition of Water Rights.—Generally speaking a water authority may acquire water rights by agreement. This will be done in the case of a local authority with the consent of the M. of H. under sect. 116 of the P.H.A., 1936 (o).

But a water authority, whether it be a local authority, joint board or a company, cannot take or acquire water rights compulsorily under any general power. It was thought that such rights might be compulsorily acquired by provisional order under sect. 176 of the P.H.A., 1875 (p), but it was laid down by a special committee of the House of Lords in the *West Houghton Case* in 1877 (q) that the acquisition of water rights compulsorily by means of powers taken by way of provisional order would be *ultra vires*. [832]

SOURCES OF WATER SUPPLY

So far as water undertakers are concerned, possible sources of water divide themselves naturally into :

Surface Sources.—(a) natural rivers and streams ; (b) artificial rivers and streams.

Underground Sources.—The law relating to watercourses applies to all watercourses flowing in a known and definite channel, whether above or below ground. Waters, however, whether above or below the surface, which have no certain course or definite limit are not watercourses, and percolating water and water diffused over the surface are subject to a different law. [833]

Natural Streams.—"It has been settled that the right to the enjoyment of a natural stream of water on the surface *ex jure naturae* belongs to the proprietor of the adjoining lands, as a natural incident to the right to the soil itself, and that he is entitled to the benefit of it, as he is to all other advantages belonging to the land of which he is the owner. He has the right to have it come to him in its natural state, in flow, quantity and quality, and to go from him without obstruction, upon the same principle that he is entitled to the support of his neighbours' soil for his own in its natural state" (r). This right depends neither on prescription nor presumed grant, but is a right incidental to the occupation of adjoining land. It is, of course, subject to the rights of other riparian owners, each proprietor having the right to the usufruct of the stream which flows through his land.

Any unauthorised interference with or use of the water may be the subject of an action for damages and may be restrained by injunction at the suit of a person whose rights are thereby prejudiced.

Where the plaintiff had the right by grant to take water from a stream for supplying the inhabitants of a town, it was held that if by a deed which conveys only land not abutting on the stream a riparian owner affects to grant water rights, such a grant though valid against the grantor can create no rights as against a third party (s).

The rights of lower riparian owners are not affected where water is

(o) 29 Halsbury's Statutes 409.

(p) 13 Halsbury's Statutes 700.

(q) *Journal of Gas Lighting*, July 31, 1877, Vol. XXX., p. 174.

(r) *Chasemore v. Richards* (1859), 7 H. L. Cas. 349, at p. 382 ; 44 Digest 34, 252.

(s) *Stockport Waterworks Co. v. Potter* (1864), 3 H. & C. 300 ; 10 L. T. 748 ; 44 Digest 7, 12.

taken from a stream and returned again unaltered in quality and undiminished in quantity (t).

Rights to abstract water for non-riparian uses may be acquired by prescription.

It would thus appear that the only methods by which water rights may be acquired are by agreement or by special Act.

"There are . . . three ways in which a person whose lands are intersected or bounded by a running stream may use the water to which the situation of his property gives him access. He may use it for ordinary or primary purposes, for domestic purposes, and the wants of his cattle. He may use it also for some other purposes—sometimes called extraordinary or secondary purposes—provided those purposes are connected with or incident to his land, and provided that certain conditions are complied with. Then he may possibly take advantage of his position to use the water for purposes foreign to or unconnected with his riparian tenement. His rights in the first two cases are not quite the same. In the third case he has no right at all. . . . In the ordinary or primary use of flowing water a person dwelling on the banks of a stream is under no restriction. In the exercise of his ordinary rights he may exhaust the water altogether. No lower proprietor can complain of that. In the exercise of rights extraordinary but permissible, the limit of which has never been accurately defined and probably is incapable of accurate definition, a riparian owner is under considerable restrictions. The use must be reasonable. The purposes for which the water is taken must be connected with his tenement, and he is bound to restore the water which he takes and uses for those purposes substantially undiminished in volume and unaltered in character" (u).

It was held in *Swindon Waterworks Co. v. Wilts and Berks Canal Navigation Co.* (w) that the water of a natural stream cannot be diverted into a reservoir in order to supply the inhabitants of a town; and it does not alter the position that the water is supplied by a riparian owner. [834]

Artificial Rivers and Streams.—Where a stream is artificial, that is, does not arise naturally from the soil, but flows in a channel cut by artificial means through the lands of adjoining proprietors, the rights of such proprietors are not *prima facie* the same as those of proprietors on the banks of natural streams. The mutual rights of the parties in such cases are not natural, but acquired rights, and are dependent for their existence entirely upon the grants by which they have been acquired, or on the nature of the user which can be proved, if the claim is by prescription. A watercourse, however, though an artificial one, may have been made in such circumstances as to confer all such rights as a riparian owner would have had in the case of a natural stream. Moreover, the natural rights to water are liable to be abridged, enlarged, or modified in many ways by grant or prescription. Thus a right may be acquired to throw back upon the land of a proprietor higher up the stream the water which, unless so reflected, would by the force of gravity pass from it; or to discharge the water upon land lower down the stream either injured in quality, or with a degree of force greater or less than the natural current. All such acquired rights are termed easements. [835]

(t) For authorities and fuller treatment of this and allied points than is here appropriate, see 33 Halsbury (2nd ed.), title WATER AND WATER RIGHTS.

(u) *Per* Lord MACNAGHTEN in *McCartney v. Londonderry and Lough Swilly Rail. Co.*, [1904] A. C., at pp. 306, 307; 44 Digest 16, 82.

(w) (1875), L. R. 7 H. L. 697; 45 L. J. (Ch.) 638; 33 L. T. 513; 13 Digest 372, 1033.

UNDERGROUND WATER

After some considerable period of doubt it has now been settled by the House of Lords in the case of *Chasemore v. Richards* (a) that the owner of land containing underground water which percolates through the soil in an undefined channel may do with that water what he will. He may divert it, or drain it away, or take it and use it, and in the doing of these things he may thereby deprive his neighbour of it and no action will lie against him therefor.

And in *Bradford Corporation v. Pickles* (b) it was held that this rule still prevailed even though the water was intercepted maliciously and for the purpose of forcing the plaintiff to buy out the defendant; for a lawful act does not necessarily become wrongful merely because the person doing the lawful act is actuated by indirect motives. In *Grand Junction Canal Co. v. Shugar* (c) it was held that although a landowner will not in general be restrained from drawing off the waters in the adjoining land yet he will be restrained if in so doing he draws off the water flowing in a defined surface channel through the adjoining land. [836]

Pollution of Underground Water.—While the law will not hinder a man from getting underground water by abstracting it from beneath his own land yet in accordance with the maxim *Sic utere tuo ut alienum non laedas*, a man will be restrained by injunction from using his own land in such a way that water percolating beneath the land of another is thereby polluted. The leading case on this point is the case of *Ballard v. Tomlinson*, in which LINDLEY, L.J., said (d): “. . . *primâ facie* no man has a right to use his own land in such a way as to be a nuisance to his neighbour, and whether the nuisance is effected by sending filth on to his neighbour's land, or by putting poisonous matter on his own land and allowing it to escape on his neighbour's land, or whether the nuisance is effected by poisoning the air which his neighbour breathes, or the water which he drinks, appears to me wholly immaterial. . . . So, if a man chooses to poison his own well, he must take care not to poison waters which other persons have a right to use as much as himself.” [837]

Protection of Underground Sources.—Where a water-supplying authority desire to protect the sources from which they derive their supply either from contamination or from depletion by the owners of neighbouring lands, then they will have to purchase such lands or enter into agreements. Thus, in order to protect the gathering grounds of a watershed from being developed it may be necessary to purchase them outright, as may also be the case where sterilisation of the land is essential to ensure that the undertakers carry out their statutory duty of affording to their consumers a pure and wholesome supply.

As regards underground sources, water authorities have often to expend large sums of money on survey schemes and in obtaining authority from Parliament before they undertake the sinking of wells for public supply. Yet, as the law stands, a person who has discovered through the work and expenditure of the water undertaking that there is an abundant supply of underground water to be had in any particular locality, may purchase land and put down wells and thereby

(a) (1859), 7 H. L. Cas. 349; 29 L. J. (Ex.) 81; 44 Digest 34, 252.

(b) [1895] A. C. 587; 60 J. P. 3; 44 Digest 35, 257.

(c) (1871), 6 Ch. App. 483; 44 Digest 35, 254.

(d) (1885), 29 Ch. D. 115, at p. 126; 49 J. P. 692; 19 Digest 158, 1096.

deprive the water authority and through them the public of that which they need and on which they have spent money.

A useful precedent was obtained by the Wolverhampton Corporation in their Act of 1936, after they had shown before Parliament how detrimental to the public interest the present position of the law can be. The protection which they obtained is as follows :

Wolverhampton Corporation Act, 1936. *For Protection of Corporation's Wells.* Sect. 26 (1) (a).—It shall not be lawful for the owner or occupier of any land which is situate within a radius of two miles from the centre of the Hilton Pumping Station (Work No. 1 authorised by this part of this Act) to construct on any part of such land any new well or other work (or to enlarge any existing well or other work) for taking or intercepting underground water except with the consent in writing of the corporation unless the water to be abstracted from such well or other work is required by such owner or occupier solely for domestic or agricultural purposes on lands and premises belonging to or occupied by him or for the purpose of supplying solely for domestic purposes or for the purposes which are referred to in para. (i.) of the definition of "agricultural purposes" which is contained in sub-sect. (3) of this section the lands and premises of any neighbouring owner or occupier to whom a supply is being afforded for those purposes by such first-mentioned owner or occupier at the date of this Act nor except with the like consent to abstract or permit the abstraction for any purpose other than domestic or agricultural purposes of any water obtainable from any such new well or other work or from the enlargement of any such existing well or other work. In giving any such consent the corporation may attach thereto such conditions as they may think fit.

A similar clause became sect. 28 (1) (a) of the Warrington Corporation Water Act of 1938. There was no similar section enacted in 1939 or 1940. [838]

Proposals of Central Water Advisory Committee.—The First Report of the Central Advisory Water Committee of the M. of H. contains a report by a sub-committee on underground water which recommends amendments of the law for the purpose of protecting public underground water sources from competitive and indiscriminate abstraction of water by private persons to the detriment of public water supplies. The M. of H. is to be empowered "to make orders defining areas in which control of the abstraction of underground water is necessary in the public interest" (para. 7). There are to be schemes of control "in the defined areas as described" not merely for the protection of public water supplies, but also for the protection of industrial or other users of underground water whose supplies might be unreasonably interfered with by the construction of new works in the vicinity of boreholes from which the existing supplies are derived" (para. 11).

As regards compensation, para. 13 states that : "It is intended that the restrictions shall apply only in areas where the abstraction of additional water would be an unreasonable interference with supplies, and thus against the public interest. At present, owners have no redress if the activities of their neighbours should interfere with, or even completely exhaust, the supplies under their land. The suggested procedure will, moreover, enure to the general good in the defined areas. We are agreed that it would be impracticable to provide for compensation in respect of any restrictions imposed under the scheme of control." [839]

DUTIES OF LOCAL AUTHORITIES IN REGARD TO WATER SUPPLY

Distribution of Supplies.—By far the largest quantity of water is supplied by local authorities, joint boards and companies working under special Acts, a population of about twenty-seven million (over two-thirds of the total population in England and Wales), being supplied by local authorities and boards with special powers, and a population of about six million by statutory water companies.

With one or two exceptions, all the local authorities and joint boards supplying water under powers given by special Acts have limits of supply (that is, areas within which water may be supplied in detail) extending beyond the districts of the local authority or joint board. In many cases these outside limits of supply are extensive. For example, the Manchester corporation supplies Manchester and the whole or part of the districts of twelve other authorities, with a population in all of nearly one-and-a-half millions; Liverpool corporation supplies Liverpool and the whole or part of the districts of eleven other authorities, with a population of over one million; Birmingham corporation supplies Birmingham and the whole or part of the districts of six other authorities, with a population of over one million. The limits of supply of the Metropolitan Water Board comprise, in addition to the County of London, fifty-six boroughs and urban districts, two whole rural districts, parts of five other boroughs and urban districts and the whole or part of forty-two parishes in rural districts, with a total population of over seven millions.

Many of the statutory companies also have wide limits of supply. The South Staffordshire Waterworks Company has limits comprising the Burton-upon-Trent, Dudley, Smethwick, Walsall and West Bromwich county boroughs and the whole or part of twenty-five other non-county boroughs and districts with a total population of nearly one million; the limits of the Newcastle and Gateshead Water Company comprise Newcastle-upon-Tyne and Gateshead county boroughs and the whole or part of the districts of sixteen other authorities, with a total population of nearly 700,000; the Sunderland and South Shields Water Company's limits comprise the Sunderland and South Shields county boroughs and the whole or part of the districts of thirteen other authorities, with a total population of approximately 500,000.

Many local authorities and statutory water companies also supply water in bulk to other local authorities and companies.

The tendency of Parliament in recent years is to require supplies to outside areas to be given at cost price. While there is general acquiescence in this in principle, it is considered by some that account should be taken of the fact that the risk is left with the water undertaker providing the supply, any loss which cannot be met in some other way having to be borne by the local ratepayers of the district of the water undertaker.

Whilst it is true that the great bulk of water supplied in England and Wales is furnished by waterworks under municipal ownership or under joint boards, statutory water companies still play a large part in this public utility service.

Water supplies are in fact provided in the following ways:

- (1) By local authorities or joint boards with statutory powers acting under the general law or special Acts;
- (2) By companies with statutory powers.

- (3) By companies or private persons without statutory powers.
- (4) From public pumps, wells, etc., owned by local authorities and used for the gratuitous supply of water to the inhabitants of the district of the local authority.
- (5) From wells, springs or streams, where facilities for obtaining water have been provided and the inhabitants of the parish have rights of access.
- (6) From sources provided, or permitted to be used, by private persons either partly for their own use and that of others or wholly for others.
- (7) From private wells or other sources for use only of the owners.

There is no complete information of all supplies, public and private. A return obtained from water undertakers and local authorities was submitted to Parliament by the Local Government Board and published in 1914. It contained much information that was useful, but some of the statistics furnished were not reliable.

The British Waterworks Association publish a "British Waterworks Directory with Statistical Tables" which is produced in co-operation with the M. of H. and contains a mass of information dealing with every phase of water supply from a statistical, engineering and scientific point of view, but being based on voluntary returns is not uniformly complete.

In England and Wales there are 530 local authorities and 15 joint bodies supplying water under the P.H.As.; 260 local authorities and 33 joint boards supplying water under powers given by special Acts; 173 companies acting under statutory powers, and about 80 companies without statutory powers. In addition, there are about 1,000 private proprietors supplying small areas. [840]

Right to Demand a Supply of Water.—The right of any person to demand a supply of water is provided for in sect. 53 of the Waterworks Clauses Act, 1847 (incorporated in the P.H.A., 1936). The right only extends to water for domestic purposes and can only be exercised upon the prior fulfilment of the conditions laid down, viz.: that the owner or occupier of a dwelling-house or part of a dwelling-house must have (a) laid his communication pipe as prescribed by the Waterworks Clauses Act, 1847, sects. 45 to 52, and sects. 121 and 279 of the P.H.A., 1936, and (b) paid or tendered the water rate payable in respect of a supply of water to the premises.

Sect. 35 of the Waterworks Clauses Act, 1847, provides that the undertakers shall cause pipes to be laid down and water to be brought to every part of their limits of supply if so required by so many owners or occupiers in any particular part, provided that the aggregate amount of water rates to be paid by them at the rates specified in the special Act amounts to not less than one-tenth (*dd*) of the capital cost of providing and laying the pipes. Furthermore, the persons requisitioning must bind themselves by agreement to take a supply for three successive years at least. This provision is not incorporated in the P.H.A., 1936.

By sect. 1 (2) of the P.H.A., 1936, "local authority" means the council of a borough, urban district or rural district.

(*dd*) In many recent Acts the amount has been increased to one-eighth.

Sect. 111 of the P.H.A., 1936 (e), provides as follows :

Duty of Local Authority with Respect to Water Supplies within their District.—" It shall be the duty of every local authority :

- (i.) to take from time to time such steps as may be necessary for ascertaining the sufficiency and wholesomeness of the water supplies within their district (ee); and
- (ii.) for the purpose of securing, so far as is reasonably practicable, that every house and school has available within a reasonable distance a sufficient supply of wholesome water for domestic purposes : (a) to provide a supply of water to every part of their district in which danger to health arises from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required and can be carried out at a reasonable cost ; and (b) without prejudice to their obligations under the preceding sub-paragraph, to exercise their powers under this Part of this Act of requiring owners of houses to provide a supply of water thereto." [841]

Powers of Local Authorities.—For the purpose of providing their district or any part of it with water, the local authority may construct or take on lease any waterworks, and, with the sanction of the Minister, purchase by agreement any waterworks, or water or any rights, powers or privileges relating to the supply of water or any undertaking which supplies water in their district ; and they may contract for a supply of water (sect. 116 (1)). Sect. 116 (2) stipulates that a local authority shall not take any steps for supplying water in any part of their district in which they are not already supplying water, and which is within the limits of supply of any statutory water undertakers, without the consent of those undertakers : provided that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to the Minister of Health, whose decision shall be final. They may purchase land by agreement (f), and, with the consent of the Minister, borrow money for the purpose (g). If they wish to purchase land compulsorily, they may apply to the Minister for a provisional order (h). (Under the Public Works Facilities Act, 1930 (i), a temporary measure, but continued from 1935 each year under the Expiring Laws Continuance Acts, compulsory powers for the acquisition of land can be obtained by order of the Minister.) Powers are not available to them under the P.H.As. (and can therefore be obtained only by special Act) to acquire water rights compulsorily ; nor may they take water from streams or rivers unless the local authority obtain the consent of all riparian interests likely to be affected (in practice usually an impossible task) (j). Where two or more authorities require a supply of water jointly as being a more economic proposition than individual supplies this is done either by a joint board under special Act or the larger authority takes powers to extend its limits of supply as necessary. Because of the lack thereof a large number of local authorities find it necessary to apply to Parliament for powers, and, as previously stated, there are nearly 300 local authorities and joint boards working under special Acts.

(e) 29 Halsbury's Statutes 407. (ee) See note (n), p. 404, post.

(f) L.G.A., 1933, s. 157 ; 26 Halsbury's Statutes 391.

(g) *Ibid.*, ss. 195, 218 ; *ibid.*, 412, 424.

(h) P.H.A., 1936, s. 306 ; 29 Halsbury's Statutes 517.

(i) 28 Halsbury's Statutes 769.

(j) See P.H.A., 1936, ss. 331, 332 ; 29 Halsbury's Statutes 531.

Until the P.H.A., 1936, a local authority had no power to supply premises outside their district (often the most sensible course to adopt for the supply of areas adjoining large urban areas), but sect. 113 of that Act (*k*) now provides that :

“ If the Minister is satisfied that the owners or occupiers of premises in any area outside the district of a local authority who supply water under this Act desire to obtain a supply of water from that authority, and that the giving of the supply is not likely to interfere with the supply of water for domestic or other purposes within the district of that authority, he may, on the application of that authority, and with the consent of the local authority within whose district, and of any statutory water undertakers within whose limits of supply the area is situate, by order authorise the applicants to supply water in that area or any part thereof, on such conditions as may be specified in the order ; provided that consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to the Minister, whose decision shall be final.”

The rights of the statutory water undertakers in the case of a local authority supplying water, with consent of the undertakers under sect. 116 (2) or by order of the Minister under sect. 113 (*l*), are safeguarded by sect. 117, which enables the undertakers to assume the supply of water to the premises within their limits on giving one month's notice to the supplying authority that they are able and intend to give a supply of water to the premises in question. [842]

Quality of Water Supplied.—Under the P.H.A., 1936, sect. 115 (*m*), a local authority must secure that the water in any waterworks belonging to them from which water is supplied for domestic purposes is wholesome (*n*).

Damage by Water not Cut Off.—Undertakers who have been requested and have agreed to cut off water during a consumer's temporary absence may be liable in damages for failure to do so (*o*).

Protection of Water Supplies from Pollution.—Sect. 61 of the Waterworks Clauses Act, 1847 (*oo*), contains a general protection against the fouling of water ; it provides for a maximum penalty of £5 against :

“ Every person who shall bathe in any stream, reservoir, aqueduct or other waterworks belonging to the undertakers or wash, throw or cause to enter therein any dog or other animal.

“ Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct or other waterworks as aforesaid, or wash or cleanse therein any cloth, wool, leather or skin of any animal, or any clothes or other thing ;

“ Every person who shall cause the water of any sink, sewer or drain, steam engine, boiler or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct or

(*k*) 29 Halsbury's Statutes 408.

(*l*) *Ibid.*, 408, 409.

(*m*) *Ibid.*, 407.

(*n*) In *Read v. Croydon Corpn.*, [1938] 4 All E. R. 631 ; 103 J. P. 25 ; Digest (Supp.), a local authority who supplied water were held liable in damages by reason of its being infected with typhoid through their negligence. See Circular 1771, dated January 30, 1939, issued from the M. of H. with a “ Memorandum on the Safeguards to be adopted in the day to day Administration of Water Undertakings,” printed in Lumley's Public Health (11th ed.), Vol. III.

(*o*) 20 Halsbury's Statutes 206.

(*oo*) *Watson v. Sutton District Water Co.* (1940), 104 J. P. 336.

other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled."

There is a further daily penalty of 20s. for each day that the offence is continued.

Sects. 62 to 67 (*p*) provide especially against the fouling of water by persons manufacturing gas, and provide for heavy penalties in the case where one of the specific offences dealt with therein has been committed. There are analogous provisions contained in sects. 21 to 28 of the Gasworks Clauses Acts, 1847 (*g*).

These provisions are incorporated in local Acts and in the P.H.A., 1936, and the Model Water Bill provides a standard clause substantially along the lines of sect. 132 (1) of the P.H.A., 1936, which gives power to make bye-laws to deal with waste, misuse, undue consumption, erroneous measurement and contamination of water (*r*).

Sect. 140 of the P.H.A., 1936 (*s*), provides for the protection of the public from polluted water.

If a local authority are of opinion that the water in or obtained from any well, tank or other source of supply not vested in them, being water which is, or is likely to be, used for domestic purposes, or in the preparation of food or drink for human consumption, is, or is likely to become, so polluted as to be prejudicial to health, the authority may apply to a court of summary jurisdiction and thereupon a summons may be issued to the owner or occupier of the premises to which the source of supply belongs, or to any other person alleged in the application to have control thereof. Upon the hearing of the summons, the court may make an order directing the source of supply to be permanently or temporarily closed or cut off, or the water therefrom to be used for certain purposes only, or such other order as appears to the court to be necessary to prevent injury or danger to the health of persons using the water, or consuming food or drink prepared therewith or therefrom. The court shall hear any user of the water who claims to be heard, and may cause the water to be analysed at the cost of the local authority (sect. 140 (1), (2)).

On failure to comply with an order made under the section, the court may, on the application of the local authority, authorise them to do whatever may be necessary for giving effect to the order, and any expenses reasonably incurred by the authority in so doing may be recovered by them from the person in default (sect. 140 (3)).

By sect. 141 (*t*) any well, tank, cistern, or water-butt used for the supply of water for domestic purposes which is so placed, constructed or kept as to render the water therein liable to contamination prejudicial to health, shall be a statutory nuisance for the purposes of Part III. of the Act. [843]

Public Wells, Pumps, etc.—Sect. 124 (*u*) provides that all public pumps, wells, cisterns, reservoirs, conduits and other works used for the gratuitous supply of water to the inhabitants of any part of the district of a local authority shall vest in and be under the control of the authority, and the authority may cause the works to be maintained and supplied with wholesome water, or may substitute, maintain and supply with wholesome water other such works equally convenient. If the local

(*p*) 20 Halsbury's Statutes 207—208.

(*g*) 8 Halsbury's Statutes 1223—1225.

(*r*) As to bye-laws, generally, see *post*, p. 416, and title BYE-LAWS. For special requirements for confirmation of bye-laws relating to water, see P.H.A., 1936, s. 132 (7); 29 Halsbury's Statutes 420.

(*s*) 29 Halsbury's Statutes 425.

(*t*) *Ibid.*, 426.

(*u*) *Ibid.*, 414.

authority are satisfied that any such works are no longer required, or that the water obtained from any such works is polluted and that it is not reasonably practicable to remedy the cause of the pollution, they may close those works or restrict the use of the water obtained therefrom.

A local authority may construct works for supplying water for the gratuitous use of any inhabitants who desire to take it not for sale but for domestic purposes (sect. 124 (3)). This power is subject to s. 116 (2) under which a local authority cannot supply within the limits of statutory water undertakers without their consent, such consent not to be unreasonably withheld. [844]

Powers of Parish Council.—By sect. 125 (1) (a) a parish council may utilise any well, spring or stream within their parish and provide facilities for obtaining water therefrom, and may execute any works, including works of maintenance or improvement, incidental to, or consequential on, any exercise of that power; but this provision does not authorise them to interfere with the rights of any person, nor does it restrict, in the case of a public well or other works, powers of the local authority under sect. 124 (*supra*).

A parish council may contribute towards the expenses incurred by any other parish council, or by any other person, in doing anything authorised by the preceding provision (sect. 125 (2)) (x). [845]

MAINS AND PIPES

Powers of Local Authority to Lay Mains.—Sect. 119 of the P.H.A., 1936 (a), provides as follows: "A local authority who supply, or are about to supply, water under this Act shall have the like powers and duties and be subject to the like restrictions in respect of the laying and maintenance of water mains within or without their district, as, under the provisions of Part II. of this Act, they have and are subject to in respect of the construction and maintenance of public sewers within or without their district, as the case may be." The powers and restrictions referred to are dealt with in the title SEWERS AND DRAINS.

Sect. 279 of the P.H.A., 1936 (b), also incorporates (with slight modifications) the general power contained in sect. 28 of the Waterworks Clauses Act, 1847 (c), which enables the undertakers to break up the soil and pavement of streets and bridges within their limits of supply and open and break up any sewers, drains or tunnels within or under such streets and bridges and lay down and place within those limits pipes, conduits, service pipes and other works and engines, and from time to time repair, alter or remove them. For the purpose they may remove and use all earth and materials in and under such streets and bridges, and do all other acts deemed necessary for supplying water to the inhabitants of the district within their limits of supply. They must, however, do as little damage as possible and make compensation for damage done in the execution of these powers. (See also title BREAKING UP OF ROADS.) [846]

Communication Pipes to be Laid by the Local Authority.—The water authority must upon the request of the owner, or of the occupier with the consent of the owner, of any dwelling-house in any street in which pipes have been laid down by them and upon payment or tender of the proportion of the water rate payable, lay down communication pipes and other necessary works for the supply of the premises with

(x) 29 Halsbury's Statutes 415.

(b) *Ibid.*, 501.

(a) *Ibid.*, 411.

(c) 20 Halsbury's Statutes 196.

water for domestic or other purposes (Waterworks Clauses Act, 1847, sect. 44) (*d*). The provision in sect. 44 requiring the consent of the owner is excluded from the incorporation of that section in sect. 120 of the P.H.A., 1936 (*dd*), and has been excluded from incorporation with local Acts for many years past.

There is a daily penalty for refusing to lay the pipes (sect. 45) (*e*).

Where the occupier refuses to pay or where the premises are unoccupied for a period of a year demand may be made of the owner for the cost of laying the communication pipes, and if he refuses to pay, the pipes may be removed and the costs incurred recovered (sect. 46) (*e*). [847]

Communication Pipes to be Laid by the Inhabitants.—Where the premises are of greater value than £10 annually, sect. 48 of the Waterworks Clauses Act, 1847 (*g*), provides for the pipes to be laid by the owners or occupiers. The consent of the owners and occupiers of the ground through which the communication-pipe is to be laid must be obtained and certain other conditions fulfilled as to payment or tender of the water rate, use of proper materials and notice to the authority. The actual connection to the main must be made under the supervision of an officer of the water authority, and two days' notice must be given (sect. 49) (*g*). Such pipes may be removed by the owner, upon giving six days' notice to the water authority, failure to give which involves a penalty (sect. 51) (*h*). [848]

The P.H.A., 1936, sect. 121 (*i*), further provides as follows :

"(1) Subject to the provisions of Part XII. of this Act with respect to the breaking open of streets, and to the following provisions of this section, any owner or occupier of premises entitled under this Act to take a supply of water from the mains of a local authority may break open any street for the purpose of laying any necessary communication pipe and for the purpose of inspecting, repairing and renewing any communication pipe serving his premises.

"(2) A person who proposes to lay a pipe from his premises to communicate with a main of the local authority shall give to the authority notice of his proposals and they may, within twenty-one days after the receipt thereof, give notice to him that they intend themselves to make the communication and if, after such a notice has been given to him, he proceeds himself to make the communication, he shall be liable to a fine not exceeding fifty pounds.

"(3) Where a local authority have given such a notice as aforesaid, they shall have all such rights in respect of the making of the communication as the person desiring it to be made would have, but it shall not be obligatory on them to make the communication until the cost of the work as estimated by their surveyor has been paid to them, or security for payment has been given to their satisfaction.

"(4) If any payment so made to the local authority exceeds the expenses reasonably incurred by them in the execution of the work, the excess shall be repaid by them and, if and so far as those expenses are not covered by the payment, if any, made to them, they may recover the expenses, or the balance thereof, from the person for whom the work was done.

"(5) For the purposes of this section, the making of the communication with a main includes all such work as involves the breaking open of a street."

There is a growing practice in recent years for the water authority to take over the responsibility for communication-pipes which is

(*d*) 20 Halsbury's Statutes 201.

(*e*) 20 Halsbury's Statutes 202

(*h*) *Ibid.*, 204.

(*dd*) 29 Halsbury's Statutes 412.

(*g*) *Ibid.*, 203.

(*i*) 29 Halsbury's Statutes 413.

considered to be a part of the service to be rendered by the water undertakers. This follows upon the recommendation of the Legislative Subcommittee of the Advisory Committee on Water of the M. of H. (1929).

The usual clauses are to be found in the Barnet District Gas and Water Act, 1937 (sects. 24—26). [849]

FINANCE

Capital and Loans.—The provision of large water supplies is expensive. It is not possible to give an estimate of the total capital expended on the existing waterworks of the country; there are many sources and works, including impounding reservoirs, still in use, of which the principal capital outlay has long been paid off.

In 1895–1896 the gross outstanding debt of local authorities in respect of water supply was £43,900,000; in 1932–1933 it was £168,600,000. The total gross outstanding local debt for the year 1932–1933 for trading services was approximately £476,000,000, so that capital expenditure on water supply accounted for rather more than one-third of the whole—namely, 35·4 per cent. This figure compares with the capital invested in companies, which amounts to rather more than £30,000,000. Of the total of £476,000,000 outstanding capital local debt for 1932–1933 about 50 per cent. is post-war expenditure, particularly on the development of electricity; and the pre-war expenditure on water supply was, of course, much less expensive than post-war schemes. These figures take no account of debt redemption. The changed monetary conditions in the national post-war economy must be given due weight in assessing the importance of water supply as a municipal trading enterprise (*k*).

Capital costs form a large proportion (on the average about 51 per cent.) of the total costs of water undertakings, and this renders imperative the exercise of care in the planning and provision of waterworks.

Local authorities acting under the P.H.As. who wish to borrow money for waterworks must obtain the sanction of the Minister, and the loan periods usually allowed by the Minister vary from 10 to 60 years—60 years being allowed for land; 40 to 50 years for the more durable works, such as large dams and tunnels for large mains; 30 years for mains; 20 years for reinforced concrete reservoirs, 15 years for machinery and 10 years for the more perishable equipment. Local authorities working under special Acts normally obtain necessary loan sanctions by the Acts, and Parliament usually allows somewhat longer loan periods than the Minister, 60 years being a common period for land and large reservoirs and 40 to 50 years for other waterworks.

Statutory water companies are authorised by their special Acts or provisional orders to raise the necessary capital by (a) the issue of ordinary or preference shares, and (b) borrowing by the issue of debenture stock or by mortgages on the undertakings, the amount which may be borrowed being usually limited to one-half of the issued share capital. [850]

Profits.—As regards local authorities, before 1923, Parliament in general authorised the application of any surplus profit, after payment of all capital charges and running costs, to the relief of the borough or general rate. The more recent trend, however, has been for provisions to be inserted in such bills promoted by local authorities, designed to ensure as far as possible that the water undertakings shall be carried on

(*k*) The word "war" in this paragraph refers to that which began in 1914.

as non-profit-making departments, any surpluses accruing in the accounts being applied to the reduction of water rates and charges. [851]

Water Rates and Charges.—From an involved and complicated system of charges for water (including charges according to the number of chimneys as indicating the number of habitable rooms) we have at length reached the relatively simple method of calculation in use to-day.

The domestic rate is chargeable upon the annual value (as variously defined), and not upon the quantity consumed, Parliament having deliberately adopted the principle of what is known as “the sanitary argument.” The Royal Commission of 1869, presided over by the Duke of Richmond, insisted that the supply of water, as a necessity of life and health, must not be left optional. This led to the negative definition in sect. 12 of the Waterworks Clauses Act of 1863 (*l*), enumerating what are not “domestic purposes,” which has been largely added to by subsequent special Acts to exclude additional modern uses.

Local authorities, joint boards and companies whose powers are derived from special Acts will normally have powers analogous to those given by the P.H.A., 1936, and the Waterworks Clauses Act, 1847, with or without modifications to suit local or peculiar circumstances.

The powers of the general law to charge for water supplied are, for local authorities, to be found in the P.H.A., 1936, sects. 126 to 131 (*m*); for other statutory undertakers sects. 68 to 74 of the Waterworks Clauses Act, 1847 (*n*), apply, unless varied in a particular Act by which they are incorporated. These sections are (with the exception of sect. 72) incorporated in the P.H.A., 1936, by sect. 120 (*o*), which provides, however, that the provisions with respect to the payment and recovery of water rates so incorporated shall have effect subject to subsequent provisions with respect to charges for water, *i.e.* sects. 126 to 131 (*m*). [852]

Domestic Charges.—By sect. 126 (1) a local authority who supply water for domestic purposes may charge in respect thereof a water rate. The rate is to be assessed on the net annual value of the premises as appearing in the valuation list for the time being in force or, if that value does not appear in the valuation list, on the net annual value of the premises as determined, in the event of dispute, by a court of summary jurisdiction. A minimum charge applicable in all cases to premises supplied with water may be fixed by the local authority.

Water may also be supplied by meter, or otherwise, on such terms as may be agreed and the local authority have the like powers for recovering water charges under agreements as they have for recovering water rates (sect. 126 (2)).

In addition to the charge for domestic purposes, a reasonable additional charge may be made in respect of water used :

- (a) in any fixed bath having a capacity in excess of fifty gallons ; or
- (b) by means of a hose-pipe or similar apparatus, either for horses or for washing vehicles.

These additional charges may be recovered as part of the water rate, and if any question arises as to whether any such charge is reasonable or not, the matter is to be referred to the Minister, whose decision is final (sect. 126 (3)).

(*l*) 20 Halsbury's Statutes 223.

(*n*) 20 Halsbury's Statutes 208—210.

(*m*) 29 Halsbury's Statutes 415—419.

(*o*) 29 Halsbury's Statutes 412.

It is the duty of the local authority to levy a water rate, and any ten persons rated to the general rate in a borough or urban district, or any five persons rated to the general rate in a contributory place in a rural district, if aggrieved by the refusal of the local authority to make charges in respect of all water supplied by them under the P.H.A., 1936, in that borough, district or contributory place or by their refusal to make such charges as those ratepayers deem reasonable and adequate, may appeal to the Minister, and the Minister may make such order in the matter as he thinks fit (sect. 126 (4)).

Under the Waterworks Clauses Act, 1847, sect. 68 (*p*), unless otherwise prescribed by the special Act, water rates are payable according to the annual value of the tenement supplied with water, and in the event of dispute the matter is to be settled by two justices. This provision is incorporated in the P.H.A., 1936, but must be read subject to that Act, and by sect. 120 (*q*) a court of summary jurisdiction is substituted for two justices. [853]

Meter Supplies.—Where an application is made to the M. of H. by a local authority, sect. 127 (*r*) provides that he may fix a maximum charge per thousand gallons for a supply of water by meter, subject to the right of the authority to make such minimum charge, if any, as he may fix. Notice of application to the Minister of Health must be given by the local authority to interested parties as directed by the Minister. Where the Minister has fixed a maximum charge for meter supplies the local authority may require that all water supplied by them to : (a) any premises used partly as a house and partly for any business; trade or manufacturing purpose for which water is required by the same occupier, or (b) any public institution, or (c) any hospital, sanatorium, school, club, hostel, assembly hall, place of public entertainment, restaurant, hotel, or licensed premises, within the meaning of that expression as used in the Licensing (Consolidation) Act, 1910 (*s*), or (d) any boarding-house capable of accommodating twelve or more persons, including the persons usually resident therein, shall be taken by meter. Where there is installed : (a) a water-cooled refrigerating apparatus, (b) any apparatus depending while in use upon a supply of continuously running water, or (c) any apparatus used for softening water which requires water for cleaning, regenerating, motive power or similar purposes, and there is also a supply of water for domestic purposes the consumer may be required to take all the water by meter at the meter rates. This, however, does not apply to an apparatus used for softening water, if one such apparatus only is used, and the water softened thereby can be drawn off into a receptacle at one point only and is used solely for domestic purposes. [854]

Sect. 134 (*t*) provides as follows :

Charges for Hire of, and Repairs to, Meters.—"A local authority may under the P.H.A. and under sect. 14, Waterworks Clauses Act, 1868, make a charge for any meter provided by them, and then have the like powers for recovering any such charges as they have for recovering water rates.

"(2) The local authority shall at their own expense keep any meters let on hire by them to any person in proper order for correctly registering

(*p*) 20 Halsbury's Statutes 208.

(*r*) *Ibid.*, 416.

(*t*) 29 Halsbury's Statutes 421.

(*q*) 29 Halsbury's Statutes 412.

(*s*) 9 Halsbury's Statutes 985.

the supply of water and, if they fail so to do, that person shall not be liable to pay rent for the meter while the default continues."

Pipes and fittings rented from the water undertaker are not subject to distress, nor can they be taken under execution levied on the occupier of premises. [855]

Charges for Water Supplied by Standpipe.—By sect. 128 (*u*), where a local authority—who supply water under the Act—have provided a standpipe or constructed a well or cistern, from which persons may obtain water, water rates may be recovered from the owner or occupier of every house within two hundred feet of that standpipe, well or cistern; but if any such house has, from other sources and within a reasonable distance, a supply of wholesome water sufficient for the domestic purposes of the inmates, no water rate is recoverable from the owner or occupier of the house, unless and until water from the standpipe, well or cistern is used by inmates of the house.

The provision, moreover, does not authorise a charge for water supplied from a standpipe, well or cistern which is used for the gratuitous supply of water to the inhabitants and which is vested in the local authority under sect. 124 (1) (*a*) or which has been constructed under sect. 124 (3) (*a*) of the Act. [856]

Common Communication Pipes.—It is provided by sect. 69 of the Waterworks Clauses Act, 1847 (*b*), that where several premises are supplied by a common pipe, each occupier or owner is liable for payment of water rates in respect of the supply as if they had been supplied by separate pipes, and this provision is incorporated in the P.H.A., 1936 (by sect. 120) (*c*). [857]

WATER RATES

By sect. 70 of the Waterworks Clauses Act, 1847 (*d*), water rates are payable in advance by equal quarterly instalments, the first payment being made when the pipes are connected or the agreement made. By sect. 130 of the P.H.A., 1936 (*e*), a local authority may resolve that the water rates shall be payable in advance by half-yearly instalments, in respect of half-years commencing on April 1 and October 1; but no proceedings are to be commenced for the recovery of any instalment until the expiration of two months from the first day of the half-year in respect of which it has been demanded. Where premises are occupied for only a part of the half-year then only the appropriate proportion of the water rate according to the number of days' occupation can be charged, and any excess paid either by the owner or occupier can be recovered by them.

Where, however, the local authority have not passed a resolution under sect. 130, then rates will be payable quarterly in advance under sect. 70 of the Waterworks Clauses Act, 1847; and sect. 71 of that Act provides that where a person gives notice to discontinue the supply of water or remove from his dwelling-house between any two quarter days then he must pay the water rate up to the next quarter day. Both of these sections are incorporated in the P.H.A., 1936 (by sect. 120).

By sect. 131 of the P.H.A., 1936 (*f*), where there is an alteration to

(*u*) 29 Halsbury's Statutes 417.

(*b*) 20 Halsbury's Statutes 208.

(*d*) 20 Halsbury's Statutes 209.

(*f*) *Ibid.*, 419.

(*a*) *Ibid.*, 414.

(*c*) 29 Halsbury's Statutes 412.

(*e*) 29 Halsbury's Statutes 418.

the valuation list for the time being in force, then for the purpose of calculating the amount due in respect of any water rate payable under this Act the alteration has a retrospective effect and operates as from the date when it has effect for the purposes of the general rate; and any excess payment or deficiency in payment is to be allowed to the consumer or paid by him accordingly. [858]

Recovery of Water Rates.—The provisions for recovery of water rates are to be found in sect. 74 of the Waterworks Clauses Act, 1847, and sect. 21 of the Waterworks Clauses Act, 1863 (*g*).

Sect. 74 of the Act of 1847 provides that in the event of non-payment of water rates the undertakers may cut off the supply and recover the amount due if less than £20 together with the expenses of cutting off and costs of recovering the rate “in the same manner as any damages for the recovery of which no special provision is made” in that Act (see sect. 85) or the special Act. If the amount due is over £20 it may be recovered together with the expenses of cutting off in any court of competent jurisdiction, *i.e.* generally, the High Court or county court.

The authority may also recover any rate or sum due together with costs in a court of competent jurisdiction under sect. 21 of the Act of 1863. Where proceedings are taken in a court of summary jurisdiction the six months’ period of limitation under the Summary Jurisdiction Acts applies: it does not, however, apply where proceedings are taken in a civil court (*h*). [859]

Compounding.—The practice of compounding with the owner of property for the payment of water rates and the allowance of discount is controlled by sect. 129 of the P.H.A., 1936 (*i*) (where that Act applies), which provides as follows:

“(1) Where a local authority supply water under this Act to a house, or to a part of a house occupied as a separate tenement, and the owner thereof is, under sub-sect. (1) of sect. 11 of the R. & V.A., 1925 (*j*), as amended by any subsequent enactment, rated instead of the occupier, the owner instead of the occupier shall, if the authority so determine, pay the rate for the supply of water, but nevertheless the rate may be demanded and recovered by them from the occupier and, if it is so recovered, the occupier shall, unless as between himself and the owner he is liable to pay the rate, be entitled to deduct the amount so paid from his rent:

“Provided that an occupier shall not be required to pay at any one time any sum in excess of the amount which was due from him on account of rent at, or has become due from him on account of rent since, the date on which he received a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the sum so demanded.

“(2) An owner of premises to which a determination of the local authority under this section applies shall, if he pays the amount due by him in respect of a water rate before the expiration of one-half of the period in respect of which the rate is payable, or before such later date as may be specified by the authority, be entitled to an allowance calculated at the same rate per cent. as the allowance which is made to him in respect of a general rate under para. (a) of sub-sect. (1) of sect. 11 of the R. & V.A., 1925, as amended by any subsequent enactment.”

This section follows sect. 72 of the Waterworks Clauses Act, 1847 (*k*), which is not incorporated by sect. 120 of this Act, but has been made

(*g*) 20 Halsbury’s Statutes 220.

(*h*) *Metropolitan Water Board v. Bunn*, [1913] 3 K. B. 181; 102 J. P. Jo. 256; 43 Digest 1098, 243.

(*i*) 29 Halsbury’s Statutes 418.

(*j*) 14 Halsbury’s Statutes 632; see title RATES AND RATING.

(*k*) 20 Halsbury’s Statutes 209.

discretionary according to local Act precedents and modified so as to make the law as to general rates and water rates similar. Sub-sect. (2) is new and follows local Act precedents. The expression "occupied as a separate tenement" presumably means a tenement capable of being separately assessed for rating purposes. The term "owner" is defined in sect. 343 (1) as meaning "the person for the time being receiving the rack-rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any person, or who would so receive the same if those premises were let at a rack-rent." [860]

Guarantee to Water Companies.—A local authority may undertake to pay to any person supplying water, or guarantee payment to any such person of, such periodical or other sums as may be agreed as a consideration for that person giving a supply of water, so far as he can lawfully do so, within any part of the authority's district, and executing any works necessary for that purpose (sect. 123) (m). [861]

Supply of Water to New Houses.—Sect. 137 of the P.H.A., 1936 (n), provides that: "Where plans of a house are, in accordance with building bye-laws, deposited with a local authority, the authority shall reject the plans unless there is put before them a proposal which appears to them to be satisfactory for providing in, or within a reasonable distance of, the house a supply of wholesome water sufficient for the domestic purposes of the inmates; and they are satisfied that the proposal can and will be carried into effect."

Any question arising under the sub-section as to whether the local authority ought to pass the plans may be determined by a court of summary jurisdiction (sect. 137 (1)). The definition of "house" in sect. 343 does not include a lock-up shop.

Where the plans have been passed, but the proposals for providing a supply of water as required by sect. 137 (1) have not been carried into effect, then the local authority must give notice to the owner of the house, prohibiting its occupation until such time as they are satisfied that such a supply has been provided and have granted a certificate to that effect.

Any person aggrieved by the refusal of the local authority to grant such a certificate may apply to a court of summary jurisdiction for an order authorising the occupation of the house and, if the court is of opinion that a certificate ought to have been granted, the court may make an order authorising the occupation of the house, and such an order shall have the like effect as a certificate of the local authority (sect. 137 (2)).

There is a penalty by way of fine of not more than £10 and 40s. a day for contravention of these requirements. [862]

Houses Already in Occupation.—Sect. 138 (o) gives power to the local authority to give notice to the owner of an occupied house requiring him within a time specified therein to provide, or secure the provision of, a supply of water to the premises.

This power, however, can only be exercised under three conditions, viz.:

- (a) that the house has not, either in the house or within a reasonable distance thereof, a supply of wholesome water sufficient for the domestic purposes of the inmates; and

(l) P.H.A., 1936; 29 Halsbury's Statutes 538. (m) 29 Halsbury's Statutes 414.
(n) *Ibid.*, 422. (o) *Ibid.*, 423.

- (b) that such a supply ought to be provided by the owner of the house; and
- (c) that, if such a supply is afforded by the authority or other water undertakers, there will not be payable by the consumer in respect of water supplied any charge in excess of the ordinary charge made in respect of a supply of water for domestic purposes to houses in the area to which such a supply is given (sect. 138 (1)).

Condition (c) refers to money "payable by the consumer in respect of water supplied" and is, therefore, a reference to the water rates, and has no relation to capital cost, which is dealt with below.

If the above conditions are fulfilled with respect to each of two or more houses, and the local authority are further satisfied that the needs of those houses can most conveniently be met by means of a joint supply, they may similarly require a joint supply to be afforded (sect. 138 (2)).

If the owner of the premises fails to carry out the requirements of the local authority, the latter may themselves provide, or secure the provision of, a supply of water to the house or houses and may recover any expenses reasonably incurred by them in so doing from the owner of the house, or, where two or more houses are concerned, from the owners of those houses in such proportions as may be determined by the authority or, in case of dispute, by a court of summary jurisdiction :

Provided that an owner shall not be required to pay more than twenty pounds in respect of any one house (sect. 138 (3)).

But it is provided that where any houses, with respect to which the local authority are, by reason of notices not having been complied with, in a position to carry out the work of providing a proper supply, are within the limits of supply of statutory water undertakers, and the owners or occupiers could lawfully demand a supply of water under the conditions laid down by sect. 35 of the Waterworks Clauses Act, 1847, or under that section as modified by any enactment regulating the undertaking, the local authority may themselves make such a requisition, and the undertakers must comply therewith as if it had been made by the owners or occupiers of the houses. The owners or occupiers are deemed to have made the requisition and to have entered into an agreement with the undertakers to take a supply of water for the minimum period of three successive years required by the section, or as modified by the special Act (sect. 138 (4)).

Where, under these provisions, a supply of water is furnished to a house by the local authority or other statutory water undertakers, water rates may be made on the premises and recovered as if the owner or occupier of the house had demanded and agreed to pay water rates for a supply (sect. 138 (5)).

Where under these provisions two or more houses in the occupation of different persons are supplied with water by a common pipe belonging to the owners or occupiers of those houses or parts of houses, or to some of them, the local authority may, when necessary, repair or renew the pipe and recover any expenses reasonably incurred by them in so doing from the owners or occupiers of the houses in such proportions as may be determined by the authority or, in case of dispute, by a court of summary jurisdiction (sect. 138 (6)). [863]

Appeal by Owner against Requirement to Provide Water.—The owner has a right of appeal to the M. of H. against the requirements of the

local authority. Such appeal must be lodged within twenty-eight days and he may then show that (a) the supply is not required; or that (b) the time allowed to him for providing the supply is insufficient; or that (c) the authority ought themselves to provide a supply of water for the district, or part of the district, in which the house is situate, or to render the existing supply of water wholesome; or that (d) part of the expenses of providing the supply, or of rendering the existing supply wholesome, ought to be borne by the authority.

Where an appeal is lodged with the Minister the local authority may not take any further steps in the matter until authorised so to do by him (sect. 139 (1) (p)).

The Minister may, upon hearing the appeal, either disallow the requirement of the local authority or allow it with or without modifications. If he allows it, he must order the authority to proceed with the proposed works, or those works as varied by the order, either forthwith or in the event of the works not being executed by the owner or owners within a time limited by the order (sect. 139 (2)).

The order may also apportion the expenses of providing the supply between the owner or owners concerned and the local authority, or may vary any such apportionment which the authority propose to make, but in no case may any owner be required to pay more than twenty pounds in respect of any one house (sect. 139 (3)). [864]

Provision of a Supply of Drinking Water in Factories.—The Factories Act, 1937, makes provision by sect. 41 (g) for the provision of a proper supply of water to factory premises.

It requires that there is to be provided and maintained at suitable points conveniently accessible to all persons employed in the factory an adequate supply of wholesome drinking water from a public main or from some other source approved in writing by the district council, such approval not to be withheld except upon the ground c. the unwholesomeness of the water. If the supply is not taken from the public main it is to be contained in suitable vessels and is to be renewed daily. All practicable steps are to be taken to protect it from contamination and if the water is for drinking purposes, whether a piped supply or not, then in such cases as the factory inspector directs it must be clearly marked "Drinking Water."

Furthermore, except where the water is delivered in an upward jet from which the employed persons can conveniently drink, proper cups or other vessels must be provided at each point of supply with facilities for rinsing them in drinking water.

For the purposes of the Factories Act, 1937, the term "district council" means the council of a borough or county district (sect. 152) (r). [865]

Power to Enter Premises.—Any authorised officer of a council upon producing, if so required, some duly authenticated document showing his authority, has a right conferred by sect. 287 of the P.H.A., 1936, to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises any contravention of the provisions of this Act or of any bye-laws made thereunder, being provisions which it is the duty of the council to enforce;

(p) 29 Halsbury's Statutes 424.

(q) 30 Halsbury's Statutes 235.

(r) *Ibid.*, 298.

- (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the council to take any action, or execute any work, under this Act or any such bye-laws ;
- (c) for the purpose of taking any action, or executing any work, authorised or required by this Act or any such bye-laws, or any order made under this Act, to be taken, or executed, by the council ;
- (d) generally, for the purpose of the performance by the council of their functions under this Act or any such bye-laws.

Admission to any premises not being a factory, workshop or workplace, shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier (sect. 287 (1) (s)).

If it is shown to the satisfaction of a justice of the peace on sworn information in writing that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry, and that there is reasonable ground for entry into the premises for any such purpose as aforesaid, the justice may by warrant under his hand authorise the council by any authorised officer to enter the premises, if need be by force. Provided that such a warrant shall not be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry (sect. 287 (2)).

The provisions of the P.H.A., sect. 287, are not to limit the powers given by sect. 57 of the Waterworks Clauses Act, 1847 (*t*), under which the surveyor, or any other person acting under the authority of the undertakers, may, between 9 a.m. and 4 p.m. enter into any house or premises supplied with water in order to examine if there is any waste or misuse of such water. If entry is refused or the examination is prevented the undertakers may cut off the supply. If required the person seeking to enter the premises must produce proper evidence of his authority. [866]

Obstruction.—Wilful obstruction of any person acting in the execution of the Act or of any bye-law, order or warrant made or issued thereunder renders the offender liable to a fine not exceeding five pounds and to a further fine not exceeding five pounds for each day on which the offence continues after conviction therefor (sect. 288) (*u*).

If on a complaint made by the owner of any premises, it appears to a court of summary jurisdiction that the occupier of the premises prevents the owner from executing any work which he is by or under the Act required to execute, the court may order the occupier to permit the execution of the work (sect. 289) (*u*). [867]

PREVENTING WASTE, ETC., OF WATER

Bye-laws as to Meters and other Fittings.—A local authority who supply water under the P.H.A., 1936, may by sect. 132 (*a*) make bye-laws for preventing the waste, undue consumption, misuse or contamination of water supplied by them. The section is based upon a common form provision in local legislation, and similar powers are possessed by most local authorities and companies who have obtained special Acts for the supply of water.

(s) 29 Halsbury's Statutes 507.

(t) 20 Halsbury's Statutes 205 ; incorporated by P.H.A., 1936, s. 120 ; 29 Halsbury's Statutes 412.

(u) 29 Halsbury's Statutes 509.

(a) *Ibid.*, 419.

These bye-laws may include provisions prescribing the size, nature, materials, strength and workmanship, and the mode of arrangement, connection, disconnection, alteration and repair, of the water fittings to be used, and forbidding any arrangements and the use of any water fittings (b) which permit, or are likely to permit waste, undue consumption, misuse, erroneous measurement or contamination of water.

Upon contravention or failure to comply with the provisions of any such bye-law, the local authority may, without prejudice to their right to take proceedings for a fine, cause the fittings which are not in accordance with the requirements of the bye-laws to be repaired, replaced or altered, and they have the like powers for recovering the expenses properly incurred by them in so doing as they have for recovering water rates.

Such bye-laws are not to apply to railway company premises other than hotels, or other houses or in offices not forming part of a railway station, so long as the fittings used do not cause waste, undue consumption, misuse or contamination of water supplied by the local authority.

Where a local authority consider that the operation of any such bye-law in force in their district, made under the Act of 1936, would be unreasonable in relation to any particular case, they may with the consent of the Minister relax the requirements of the bye-law or dispense with compliance therewith.

Where this is done the local authority must give notice of any proposed relaxation or dispensation in the manner and to such persons, if any, as the M. of H. direct, and the Minister may not give his consent before the expiration of one month from the giving of the notice, and, before giving his consent, must take into consideration any objection which may have been received by him.

Bye-laws made by local authorities under the Act of 1936 for the prevention of waste, misuse, etc., of water, are to be subject to review every ten years subject to the power of the M. of H. by order to extend the period during which any bye-law is to remain in force (sect. 132 (6)).

In making bye-laws the requirements of the L.G.A., 1933, sect. 252, must be complied with and also (a) notice of their intention to apply for confirmation of the proposed bye-laws must be published by the local authority in the *London Gazette* at least one month before the application, and (b) if the local authority supply water outside their district they must send at least one month before the application is made a copy of the bye-laws to the local authority of every district in which any premises to which the bye-laws will apply are situate (sect. 132 (7)). [868]

Statutory Provisions.—Power is given by sect. 133 of the P.H.A., 1936 (c), to examine and test any water fittings used in connection with water supplied by a local authority supplying water under that Act.

For injuring water-pipes or fittings or fraudulently altering or interfering with the index of a water meter, or otherwise for fraudulently taking water, there is prescribed a penalty not exceeding five pounds, and the cost of repairing the fittings or putting the meter in working order may also be recovered (sect. 135) (d).

The P.H.A., 1936, also incorporates, by sect. 120, the relevant sections of the Waterworks Clauses Acts which deal with the waste, misuse, undue consumption and contamination of water. Sects. 54

(b) P.H.A., 1936, s. 132 (5), applying s. 63 ; 29 Halsbury's Statutes 374, 419.

(c) 29 Halsbury's Statutes 421.

(d) *Ibid.*, 421.

to 60 of the Act of 1847 (*e*) and sects. 17 to 20 of the Act of 1863 (*f*) contain the provisions relating to waste and misuse. Pollution is dealt with by sects. 61 to 67 of the Act of 1847 (*g*). For pollution which could have been prevented had the undertakers exercised due care, they may be liable in damages (*gg*).

By sect. 17 of the Waterworks Clauses Act, 1863 (*f*), it is provided that "if any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, water-closet or other apparatus or receptacle to be out of repair or to be so used or contrived as that the water supplied to him by the undertakers is, or is likely to be, wasted, misused, unduly consumed or contaminated, or so as to occasion or allow the return of foul air or other noisome or impure matter into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding £5."

Where the water undertaking is not compelled to afford a constant supply of water under pressure then a proper storage cistern fitted with a ball cock must be provided by the consumer, and if he neglects to keep these fittings in repair, or fails to provide them, the water may be cut off until the necessary work has been done (1847 Act, sect. 54). There is a maximum penalty of five pounds for allowing any cistern, pipe, ball or stop cock to be out of repair, and the undertakers may themselves make the repairs and recover the cost from the consumer (sect. 55). Persons doing damage or interfering with pipes or valves or causing waste are also liable to a penalty not exceeding five pounds (sect. 60).

A similar penalty is imposed for allowing persons who do not take a supply of water to take water from pipes of a consumer; and persons who take water from reservoirs, pipes, etc., of the water undertakers are likewise liable to penalties (1847 Act, sects. 57, 58; 1863 Act, sect. 20).

Where a person uses water for other than domestic purposes without the agreement of the undertakers he is liable to a fine of forty shillings and to pay for the water misused (1863 Act, sect. 18); and a penalty is imposed for making alterations to the water supply arrangements of premises without the consent of the undertakers (1863 Act, sect. 19). [869]

Power of Water Undertakers to Supply Water, or Sell or Lease Waterworks, to Local Authority.—By sect. 122 of the P.H.A., 1936 (*h*), any person supplying water, whether under statutory powers or not, may contract to supply water to a local authority, or sell or lease to a local authority all or any of his waterworks and all his rights, powers and privileges attaching thereto, but subject to all liabilities attaching thereto. Special provision is made as to the necessary resolution for sale by a company. [870]

London.—The water authority for London is the Metropolitan Water Board (see title METROPOLITAN WATER BOARD).

Sects. 95 to 103 of the P.H. (London) Act, 1936 (*i*), deal with the

(*e*) 20 Halsbury's Statutes 204—206.

(*f*) *Ibid.*, 224—225.

(*g*) *Ibid.*, 206—208.

(*gg*) *Read v. Croydon Corpn.*, [1938] 4 All E. R. 631; 103 J. P. 25; Digest (Supp.). See note (*n*), *ante*, p. 404.

(*h*) 29 Halsbury's Statutes 414.

(*i*) 30 Halsbury's Statutes 496—500.

provision of adequate water supply to houses. An occupied house (*j*) without proper supply shall be a nuisance to be dealt with summarily ; it is not lawful to occupy as a dwelling-house a house built since 1891 until the sanitary authority certifies that there is sufficient water supply, or, on appeal, a petty sessional court makes an order authorising the occupation of the house ; with certain exceptions, tenement houses must have water supply for domestic purposes for each separate tenement (sect. 95). Adequate water supply for drinking purposes must, with certain exceptions, be provided for each building or separate tenement used for habitation or where persons are employed. The exceptions include parts of buildings at a greater height than the Metropolitan Water Board are required to supply (sect. 96). Absence of water fittings constitutes a nuisance (sect. 97). The Metropolitan Water Board must give notice to the sanitary authority within twenty-four hours after cutting off water (sect. 98). Sanitary authorities are required to make bye-laws as to cleanliness of cisterns, tanks, etc. (sect. 99). Sanitary authorities may maintain cisterns, wells, fountains, etc., for gratuitous water supply (sect. 100). A penalty is imposed for causing water to be corrupted by gas washings (sect. 101) or for fouling wells, fountains or pumps (sect. 102). Petty Sessional Courts on complaint by a sanitary authority may close polluted wells, tanks or public pumps (sect. 103).

As to supply of water to public baths and washhouses on special terms, see sect. 170 (*k*). The Metropolis Gas Act, 1860, sects. 51 and 52 (*l*), contains provisions to prevent the contamination of water supply by gas supply. See also title METROPOLITAN WATER BOARD. [871]

(*j*) The definition in s. 304 of the London Act ; 30 Halsbury's Statutes 603, is wider than that in the P.H.A., 1936, *ante*, p. 413.

(*k*) 30 Halsbury's Statutes 538.

(*l*) 8 Halsbury's Statutes 1249, 1250.

WATER AUTHORITIES

See WATER SUPPLY.

WATER-CLOSETS.

See CLOSETS ; SANITARY CONVENIENCES.

WATERCOURSES

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See also titles : DITCHES ;
LAND DRAINAGE ;
POLLUTION OF RIVERS.

General.—Part XI. of the P.H.A., 1936 (*a*), collects into a group of sections (259—266) the provisions affecting watercourses previously contained in sects. 48 and 91 of the P.H.A., 1875, sect. 8 (1) (f) of the L.G.A., 1894, and sects. 51—55 of the P.H.A., 1925. In this title reference is made only to Part XI. of the Act of 1936. For the powers and duties of local authorities and land drainage authorities in relation to watercourses reference should be made to the title LOCAL AUTHORITIES. [872]

Local Authorities.—Except as otherwise noted below, the powers conferred by Part XI. of the P.H.A., 1936, are exercisable by local authorities, *i.e.* the councils of boroughs, urban districts and rural districts; the powers are exercisable by county councils only on a relinquishment to the county council by agreement under sect. 320 (*b*), or on a transfer order made by the M. of H. in exercise of the default powers contained in sects. 321—323 (*c*).

The operation of Part XI. is subject to the restrictions imposed by sect. 266 (*d*) which prevents the exercise of any powers contained in Part XI. with respect to (*inter alia*) any watercourse within the jurisdiction of a land drainage authority (*e*) except after consultation with that authority, or with respect to any watercourse vested in the L.C.C. without the consent of that council; the powers of railway companies and dock undertakers to culvert or cover in any watercourse are not prejudiced, nor can they be required, without their consent to culvert or cover any watercourse constructed by them and used by them for the purposes of their undertaking. [873]

Meaning of "Watercourse."—This term includes natural and artificial channels wherein water flows between defined banks (*f*). Whether a channel is a watercourse is a question of fact. The circumstance that the flow of water diminishes or ceases in dry seasons does

(*a*) 29 Halsbury's Statutes 487.

(*b*) *Ibid.*, 524.

(*c*) *Ibid.*, 524, 525.

(*d*) *Ibid.*, 491.

(*e*) As to land drainage authorities, see s. 343 (1); title LAND DRAINAGE. S. 266; 29 Halsbury's Statutes 491, does not give a land drainage authority a power of veto.

(*f*) See Lumley's Public Health (11th ed.), Vol. I., p. 520, note (*d*). See also Land Drainage Act, 1930, s. 81; 23 Halsbury's Statutes 588.

not necessarily prevent the channel from being a watercourse, but a channel wherein the flow is only occasional (as in the case of a bourne flow from chalk) is not a watercourse. The unlawful discharge of sewage into a natural watercourse, in contravention of sect. 3 of the Rivers Pollution Prevention Act, 1876 (*g*), cannot convert the watercourse into a sewer within the meaning of the P.H.As. (*h*); and by sect. 30 of the P.H.A., 1936 (*i*), nothing in that Part of the Act (which relates, *inter alia*, to sewerage and sewage disposal) authorises a local authority to construct or use any sewer, drain or outfall to convey foul water into any watercourse, until the water has been so treated as not to affect the purity and quality of the water in the watercourse. Sect. 331 (*k*) also provides that nothing in the Act authorises a local authority injuriously to affect any watercourse without the consent of any person who would, if the Act had not been passed, have been entitled to prevent such injury. [874]

Offences.—Sect. 259 (1) of the P.H.A., 1936 (*l*), provides (*inter alia*) that any watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance, shall be a statutory nuisance for the purposes of Part III. of the Act (*l*); similarly, any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health, is a statutory nuisance, but in this case no liability is imposed on any person other than the person by whose act or default the nuisance arises or continues.

Sect. 259 (2) (*m*) renders liable to a penalty, not exceeding forty shillings, any person who throws or deposits any cinders, ashes, bricks, stone, rubbish, dust, filth or other matter likely to cause annoyance into or in (*inter alia*) any watercourse; and a like penalty may be imposed on any person who suffers any such act to be done. [875]

Powers of Parish Councils.—By sect. 260 (*n*) a parish council may deal with any watercourse, which can be brought within the terms “pond, pool, ditch, gutter or place containing, or used for the collection of any drainage, filth, stagnant water or matter likely to be prejudicial to health,” by draining, cleansing or covering it, or otherwise preventing it from being prejudicial to health; but protection is given to private rights, and to public drainage, sewerage or sewage disposal works. Powers are given to execute, maintain and improve works for the purposes of this section and to contribute towards the expenses of any other person in doing anything mentioned in the section. Without prejudice to their right to take action in respect of a statutory nuisance, a local authority may exercise any powers which a parish council may exercise under this section.

Provisions for obtaining orders for the cleansing of offensive watercourses forming the boundary between county districts or near to the boundary of a county district are contained in sect. 261 (*n*). (See title DITCHES.) [876]

(*g*) 20 Halsbury's Statutes 316.

(*h*) *Legge (George) & Son, Ltd. v. Wenlock Corpn.*, [1938] A. C. 204; [1938] 1 All E. R. 37; Digest (Supp.); *Airdrie Magistrates v. Lanark County Council*, [1910] A. C. 286; 44 Digest 42, 299.

(*i*) 29 Halsbury's Statutes 348.

(*k*) *Ibid.*, 531.

(*l*) *Ibid.*, 394. See title NUISANCES SUMMARILY ABATABLE UNDER THE P.H.As.

(*m*) *Ibid.*, 487.

(*n*) *Ibid.*, 488.

Culverting.—By sect. 262 (o) a local authority is empowered to require the culverting of watercourses where building operations are in prospect. (See title DITCHES.) Any question arising under this section between a local authority and an owner as to the reasonableness of any works required by the authority, may on the application of either party be determined by a court of summary jurisdiction (p).

Sect. 263 prohibits the culverting or covering of any watercourse except in accordance with plans and sections submitted to and approved by the local authority. This section is in force in boroughs and urban districts, and in rural districts or contributory places in which sect. 52 of the P.H.A., 1925, was in force immediately before October 1, 1937 (q), and may be declared to be in force in any other rural district or contributory place by order of the M. of H. made under sect. 13 of the Act of 1936 (r). Approval of plans and sections under sect. 263 may not be withheld unreasonably, and if the local authority fail to notify their decision within six weeks after plans have been submitted, they are deemed to have approved them. Any question as to the reasonableness of any works which the local authority require to be executed as a condition of approval, or as to the reasonableness of their refusal to approve may, on the application of either party, be determined by a court of summary jurisdiction (o). A local authority cannot, as a condition of approval, require an owner to receive upon his land, or make provision for the passage of a greater quantity of water than he is otherwise obliged to receive or permit to pass; and if the owner, at the request of the authority, makes provision for a greater quantity of water, any additional cost reasonably incurred by him in complying with the request of the authority must be borne by them (s). Contravention of sect. 263 is punishable by a fine not exceeding £5, and a daily penalty after conviction not exceeding 40s.

Sect. 264 of the P.H.A., 1936 (t), imposes on the owner or occupier of land an obligation to repair, maintain and cleanse any culvert in, on or under his land; the local authority may serve notice requiring compliance with this section, and the provisions of Part XII. of the Act (u) as to appeals against, and enforcement of notices apply. This section affects land in a borough or urban district, or in a rural district or contributory place in which sect. 53 of the P.H.A., 1925, was in force immediately before October 1, 1937, or where sect. 264 has been declared to be in force by an order of the M. of H. made under sect. 13 of the Act of 1936 (a).

A local authority may, if they think fit, contribute the whole or part of the expense of works, or agree with any owner or occupier to execute works, for the purposes of Part XI. of the P.H.A., 1936 (sect. 265) (t). [877]

(o) 29 Halsbury's Statutes 489.

(p) See sect. 300; 29 Halsbury's Statutes 515. The procedure is by way of complaint for an order, and the Summary Jurisdiction Acts apply to the proceedings. It would seem that the time limit and statement of right of appeal, specified in s. 300 (2), (3) do not apply, as this is not an appeal; but it is thought advisable to inform the owner of his right to apply to a court of summary jurisdiction. An appeal lies to quarter sessions against the decision of the justices (s. 301).

(q) I.e. the date of commencement of P.H.A., 1936.

(r) 29 Halsbury's Statutes 330.

(s) *Seemle*, this may include maintenance charges as well as the original capital outlay. The precise terms of any bargain under s. 263 should be embodied in an enforceable agreement expressed to bind the successors in title of the landowner.

(t) 29 Halsbury's Statutes 490.

(u) *Ibid.*, 497.

(a) *Ibid.*, 330.

Pollution.—The P.H.A., 1875, sect. 69 (*b*), empowers any local authority, with the sanction of the Attorney-General, to take proceedings to protect any watercourse in their jurisdiction from pollution arising from sewage either within or without the district of the local authority; such proceedings may be in the name of the local authority or of any other person, with his consent, and costs of such proceedings are deemed to be expenses properly incurred in the execution of the P.H.As. [878]

London.—Under sect. 24 of the P.H. (London) Act, 1936 (*c*), metropolitan borough councils may cause ditches at the side of or across public roads or footways to be filled up and may substitute pipe drains.

Under sect. 83 (*d*) sanitary authorities (the City corporation, metropolitan borough councils, etc.) must drain, cleanse, cover or fill up open ditches, etc., containing filth, water, etc., of an offensive nature, and must require owners and others to execute necessary works within a specified time on notice. Sanitary authorities may defray expenses themselves and must pay compensation in respect of interferences with ancient mills or water rights. Appeal lies to the L.C.C. in respect of the construction, covering, filling up or alteration of drains.

Under sect. 82 (1) (*b*) (*e*), ditches, watercourses, etc., so foul or in such a state as to be a nuisance or injurious or dangerous to health are nuisances to be dealt with summarily.

The Metropolitan Police Act, 1839, sect. 60 (*f*), provides a penalty on any person who in any street or public place throws or causes to fall any rubbish, etc., into any stream or watercourse. [879]

(*b*) 13 Halsbury's Statutes 654.

(*d*) *Ibid.*, 490.

(*f*) 19 Halsbury's Statutes 123.

(*c*) 30 Halsbury's Statutes 457.

(*e*) *Ibid.*, 489.

WATERING OF ROADS

See SCAVENGING.

WATERING PLACES

See ADVERTISING BY LOCAL AUTHORITIES.

WATERWORKS

See WATER SUPPLY.

WEEDS, INJURIOUS

See INJURIOUS WEEDS.

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WEIGHTS AND MEASURES

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See also titles : COAL WEIGHING.

INSPECTOR OF WEIGHTS AND MEASURES.

Introductory.—The main object of the numerous statutes and regulations which impose duties and confer powers on local authorities in relation to weighing and measuring appliances are to secure uniformity and accuracy in the apparatus used to ascertain the weight or measure of goods which are the subject of trade transactions generally ; and also to protect the public against short weight and measure when they buy goods of specified kinds, especially food, coal, liquid fuel and sand and ballast. While the sale of any goods of short weight or short measure may be, in certain circumstances, the subject-matter of criminal or civil proceedings under the common law, the concern of local governing bodies, as weights and measures authorities, is with sales of such goods as come within the defined and restricted scope of the Acts which they enforce.

Two titles in earlier volumes, namely **COAL WEIGHING** and **INSPECTOR OF WEIGHTS AND MEASURES**, make it unnecessary to deal here with those subjects. Also, meters for recording the consumption of gas, electric current, and water are not within the scope of this title. [880]

Powers of Board of Trade.—The department of the Government invested with powers and duties connected with weights and measures is the Board of Trade, which has a special branch, known as the Standards Department, for the purpose. The address of the Controller

of the Standards is Chapter Street House, Chapter Street, London, S.W.1 (y). The chief duties of the Board in this matter are :

- (a) The custody and maintenance of the imperial standards of weight and measure, and of one set of the parliamentary copies thereof.
- (b) The verification of the local standards possessed by local authorities.
- (c) The examination and approval of patterns of new or unusual forms of weighing or measuring appliances.
- (d) The examination of candidates desiring to qualify as inspectors of weights and measures.
- (e) The enactment of statutory regulations for observance by local authorities and their inspectors.
- (f) The determination of differences submitted for decision. [881]

Local Authorities.—The local authorities responsible for administering the Weights and Measures Acts, 1878 to 1936 (z) are : in the City of London, the corporation (a) ; elsewhere in London, the L.C.C. ; in all county boroughs and in some other boroughs, the borough council ; elsewhere, the county council (b). Under the Act of 1878, the council of a borough which had not a separate court of quarter sessions was not an authority unless it so resolved, but if the borough had provided standards and appointed an inspector before that Act came into operation, it remained an authority unless the council otherwise resolved (c). But if a non-county borough, whether a quarter sessions borough or not, had a population of less than 10,000 at the census of 1881, the powers of the council were transferred to the county council by sect. 39 of L.G.A., 1888 (d). In charters granted to some recently-created boroughs, there is an express provision debarring the council from resolving to be a weights and measures authority. [882]

Principal Duties of Local Authorities.—Much of the administrative work required under the Acts is a duty laid directly on the duly-appointed inspectors (see title INSPECTOR OF WEIGHTS AND MEASURES). The chief duties placed on the authorities themselves are :

- (a) The appointment, general direction and supervision of the inspectors.
- (b) The provision and maintenance of weights and measures offices, local standards and equipment.
- (c) The rendering of reports to the Board of Trade. [883]

Acts and Regulations.—The principal Acts and regulations enforced by local authorities which are weights and measures authorities, are :

The Weights and Measures Acts of 1878 (e), 1889 (f), 1904 (g) and 1936 (h), the Weights and Measures (Metric System) Act, 1897 (g) ;

-
- (y) Temporarily removed to Boots' Hotel, North Promenade, Blackpool.
 - (z) 20 Halsbury's Statutes 369, 419, and 29 Halsbury's Statutes 1023.
 - (a) Strictly, the Court of the Lord Mayor and Aldermen of the City ; *ibid.*, 393.
 - (b) Weights and Measures Acts, 1878 (ss. 40, 50, 64 ; Sched. IV.) and 1889 (s. 35) ; L.G.A., 1888, s. 39 (repealed).
 - (c) S. 50 ; 20 Halsbury's Statutes 382, 393.
 - (d) 10 Halsbury's Statutes 717 (repealed).
 - (e) 20 Halsbury's Statutes 369.
 - (f) *Ibid.*, 395.
 - (g) *Ibid.*, 408.
 - (h) 29 Halsbury's Statutes 1023.

the Weights and Measures (Amendment) Act, 1926 (*i*); and the Sale of Food (Weights and Measures) Act, 1926 (*k*).

Regulations and orders under these Acts include :

The Weights and Measures Regulations, 1907 (*l*), supplemented by further regulations of 1926 (2) (*m*) and 1932 (*n*); the Weights and Measures (Leather Measuring) Regulations, 1921 (*o*); the Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929 (*p*); the Sale of Food (Weights and Measures) Pre-packed Articles Regulations, 1927 (*q*); the Weights and Measures (Sand and Ballast) Regulations, 1938 (*r*); the Standards Department Fees Order, 1923 (*s*); the Standards Department (Local Authorities) Fees Orders, 1925 and 1938 (*t*); the Weights and Measures (Verification and Stamping Fees) Order, 1926 (*u*); the Weights and Measures (Error Tolerated in Local Standards) Order, 1907 (*a*); the Measuring Instruments (Liquid Fuel and Lubricating Oil) Verification and Stamping Fees Amendment Order, 1929 (*b*); and additional regulations of the same year (*c*). For the powers of inspectors of weights and measures under Acts not forming part of the general code of weights and measures law, see title INSPECTOR OF WEIGHTS AND MEASURES. [883A]

Trade Contracts.—So far as contracts and bargains are made for the sale of goods by weight or measure, the transaction must be based on the weights and measures of the imperial system of standards or of the metric system (*d*). Goods sold by weight must be sold by avoirdupois weight except that gold and silver, and articles made therefrom and other precious metals or stones may be sold by troy weight, and drugs sold by retail may be sold by apothecaries' weight (*e*). [884]

Systems of Weights and Measures.—The following particulars show the relationship between the weights and measures of the imperial and metric systems respectively :

1 metre	=1.0936143 yards.
1 yard	=0.914399 metres.
1 kilogram	=2.2046223 lb.
1 pound	=0.45359243 kilogram.
1 litre	=1.7598 pint.
1 gallon	=4.5459631 litres.

The litre contains 1,000 cubic centimetres and a litre of water, at the standard temperature, weighs one kilogram. As a kilogram contains 1,000 grams, a cubic centimetre of water weighs a gram. A

(*i*) 20 Halsbury's Statutes 418.

(*k*) *Ibid.*, 419.

(*l*) S.R. & O., 1907, No. 698.

(*m*) S.R. & O., 1926, No. 1348; S.R. & O., 1926, No. 1659.

(*n*) S.R. & O., 1932, No. 557.

(*o*) S.R. & O., 1921, No. 942.

(*p*) S.R. & O., 1929, No. 183.

(*q*) S.R. & O., 1927, No. 528.

(*r*) S.R. & O., 1938, No. 236.

(*s*) S.R. & O., 1923, No. 317.

(*t*) S.R. & O., 1925, No. 579 and S.R. & O., 1938, No. 634.

(*u*) S.R. & O., 1926, No. 969.

(*a*) S.R. & O., 1907, No. 1017.

(*b*) S.R. & O., 1929, No. 482.

(*c*) S.R. & O., 1929, No. 751.

(*d*) Weights and Measures Act, 1878, s. 19; 20 Halsbury's Statutes 374.

(*e*) *Ibid.*, s. 20; *ibid.*

fluid ounce of water weighs one ounce and a pint of water weighs one and a quarter pounds. [885]

Verification and Inspection.—No weight or measure may be used, or be in possession for use for trade, unless it is of the denomination of a Board of Trade standard (*f*); just and accurate (*g*); and stamped by an inspector of weights and measures (*h*). Any weight, measure, weighing or measuring instrument found on trade premises is deemed to be in possession for use for trade until the contrary is proved (*i*). No weighing or measuring appliance may be used fraudulently (*k*). The verification and stamping of appliances are normally carried out at offices established or used by the local authority; but in certain circumstances may be carried out at the factories where the appliances are made. In country districts, inspectors usually pay periodical visits to a testing centre, perhaps once in three months or six months. Inspectors are guided by regulations, instructions and decisions of the Board of Trade when verifying apparatus, but also have to exercise personal discretion within the limits laid down.

Inspectors of weights and measures have full powers to enter trade premises, inspect and test such appliances as are in the traders' possession for trade purposes; obliterate stamps on weights, etc., which have become inaccurate, and seize such weighing and measuring appliances as are unlawfully used or in possession for use (*l*); and institute proceedings under the Weights and Measures Acts if generally authorised by the local authority in that behalf (*m*). An inspector must have, and should carry with him, for production if required, a warrant of appointment signed by a justice of the peace.

It is a duty of weights and measures authorities to provide their inspectors with office accommodation and equipment to the satisfaction of the Board of Trade and to arrange for necessary verifications and inspections to be made. Generally, trade premises should be visited at least once in each year.

The weights and measures used by inspectors for verifying and testing trade weights, measures and the like, are known as "working standards." They must be kept in good condition and compared by the inspector at regular and prescribed intervals with the "local standards." These local standards, or standards of reference, in their turn, have to be verified and periodically re-verified by the Standards Department of the Board of Trade—as have also the inspectors' balances.

The fees to be charged for verification by the inspectors are prescribed by regulations (*n*). The fee in each instance is a fee for verification and not a stamping fee, and is to be charged when an appliance is rejected by the inspector after examination as unfit to be stamped. No fee is chargeable in respect of the inspection of a weight, measure

(*f*) S. 24; 20 Halsbury's Statutes 374.

(*g*) S. 25; *ibid.* This section and s. 29 apply also to any scale, balance, steelyard or weighing machine and to any measuring instrument.

(*h*) S. 29; *ibid.*, 376.

(*i*) S. 59; *ibid.*, 384.

(*k*) S. 26; *ibid.*, 375.

(*l*) S. 18; *ibid.*, 381.

(*m*) Weights and Measures Act, 1904, s. 14; 20 Halsbury's Statutes 412.

(*n*) Weights and Measures (Verification and Stamping Fees) Order, 1926, S.R. & O., 1926, No. 969; and an amending Order, S.R. & O., 1929, No. 482, applying to instruments for measuring liquid fuel and lubricating oil.

or instrument which has already been stamped and is in use for trade. The inspector must pay in all fees to the authority appointing him and must keep accurate and specified records of all fees received. [886]

Short Weight and Measure in Food.—It is not required by law that all kinds of food shall be sold by measure or by weight. Foods which must be retailed by weight are bread, meat and a variety of articles enumerated in the First Schedule to the Sale of Food (Weights and Measures) Act, 1926 (*o*). Generally, milk must be sold in quantities or multiples of half a pint (*p*). When any food is sold by retail by weight or measure, or purports to be so sold, an offence is committed if the quantity supplied to the purchaser is less than the purported quantity (*q*) or if there has been any misrepresentation of weight or measure calculated to mislead the purchaser or prospective purchaser (*r*), or if there is a failure to comply with any of those sections of the Act which relate to the sale of certain foods by net weight and limit the weight of wrappings included in the gross weight (*s*), or to the sale of particular articles such as meat (*t*), bread (*u*) or milk (*x*). Short weight or measure in wholesale transactions is only an offence under the Act when the goods are pre-packed (*y*). Inspectors have power to make test purchases and also to test the weight or measure of goods sold or of packets already made up for sale by weight or measure (*a*).

Sect. 12 of the Act (*b*) contains a number of safeguards designed to protect a trader. Thus, *bona fide* mistake, or accident, coupled with due diligence to prevent its occurrence, is a good defence. So is proof that the deficiency in an article sold and delivered has occurred as the result of unavoidable evaporation or drainage—if due care has been taken to avoid the deficiency. So, too, a warranty from a manufacturer or wholesale dealer may be a good defence. An employer who is in a position to prove that he has used due diligence may, when summoned for an offence actually committed by a servant, obtain a summons against such servant, and in certain circumstances the court may then exempt the employer from penalty and fine the employee. In such circumstances, the employer must prove that the employee summoned actually committed the offence in question. It is not enough to prove that the employee merely conducted by some act or omission to the commission of the offence.

A shop manager is not "in possession of" his employer's property (food) stored at the employer's shop, and does not, therefore, commit the offence of having short-weight food in possession for sale (*c*).

In the case of bread or pre-packed food, a court must have regard (if the deficiency in an individual loaf or packet is considerable) to the average weight or measure of other loaves or packets of the same

(*o*) 20 Halsbury's Statutes 419.

(*p*) Sale of Food (Weights and Measures) Act, 1926, ss. 7, 8, 13; 20 Halsbury's Statutes 422, 425.

(*q*) *Ibid.*, s. 1; *ibid.*, 419.

(*r*) *Ibid.*, s. 3; *ibid.*, 419.

(*s*) *Ibid.*, s. 4; *ibid.*, 419.

(*t*) *Ibid.*, s. 5; *ibid.*, 421.

(*u*) *Ibid.*, s. 6; *ibid.*, 421.

(*x*) *Ibid.*, s. 7; *ibid.*, 422.

(*y*) *Ibid.*, s. 14; *ibid.*, 426.

(*a*) *Ibid.*, s. 10; *ibid.*, 423.

(*b*) 20 Halsbury's Statutes 424.

(*c*) *A. Walking, Ltd. v. Robinson* (1930), 99 L. J. (K. B.) 171; Digest (Supp.).

kind sold by the defendant or in his possession for sale or delivery on the same occasion (*d*).

Prosecutions under the Act against a retailer of food—except for the offence of obstructing an inspector—may not be instituted (by the laying of an information) more than twenty-eight days after the commission of the offence; nor unless, within seven days after the offence, notice in writing has been served on the defendant or sent to him by registered post—stating the date and nature of the offence alleged; nor unless the person accused has had a reasonable opportunity to check the deficiency of which the complaint is made. In practice, inspectors carry with them forms which may be completed by them on the spot and handed to the alleged offender, which often makes the subsequent service of a written notice unnecessary (*e*).

Prosecutions under the Act may not be instituted except by or on behalf of a local authority, a police authority or the Director of Public Prosecutions. In the great majority of cases, the prosecution is instituted by the generally authorised inspector of weights and measures on behalf of the local authority appointing him (*f*).

Fines in respect of breaches of the Act in relation to the weight or measure of food may not exceed £5 for a first offence (*g*) except that where fraud is proved imprisonment may be ordered, in virtue of the fact that the Act is to be construed as one with the Weights and Measures Acts of 1878 and 1889. [887]

Goods to be Sold by Net Weight.—An article is sold by net weight when the weight of any wrapper is not included in the purported weight of the goods. Bread and butchers' meat (as will be seen from subsequent paragraphs) must be sold by net weight; and the other foods to which this requirement also applies are: tea, coffee-beans, ground coffee, cocoa, cocoa powder, chocolate powder, and potatoes. Bacon, ham, butter, lard, suet and margarine must also be sold by net weight, except that where one of these articles is weighed for sale in a wrapper or container not exceeding a prescribed maximum weight, the weight purported to be sold may—subject to certain conditions—include the weight of the wrapper. Similar requirements, but with a difference in the maximum weight permissible for wrappers, apply to the sale of flour, sago, tapioca, sugar, oatmeal, rice, dried peas and currants, and a few other articles of food, named in the First Schedule to the Act of 1926 (*h*). In the case of a large variety of articles of food, including fish, fresh fruit and vegetables (other than potatoes), jam and confectionery, sale by net weight is not imperative; but any statement as to the weight of any pre-packed article of food is deemed to be a statement of its net weight unless the contrary is specified.

When any of the foods included in the First Schedule is sold or is in possession for sale “pre-packed,” it must be made up for sale in the prescribed quantities, *i.e.* multiples of 2 ozs. up to a limit of 8 ozs., multiples of 4 ozs. up to a limit of 2 lb., multiples of 8 ozs. up to 4 lb., or multiples of 1 lb. (*i*). These requirements are varied with respect to sugar by the Sugar (Weights and Measures) Order, 1940 (*k*).

It is also unlawful to sell any article (not being “pre-packed”) or

(*d*) S. 12 (1); 20 Halsbury's Statutes 424.

(*f*) S. 12 (7); *ibid.*

(*h*) *Ibid.*, 427.

(*i*) S. 4 (2); 20 Halsbury's Statutes 420.

(*k*) S.R. & O., 1940, No. 22 (amended by No. 98).

(*e*) S. 12 (6); *ibid.*, 425.

(*g*) S. 11; *ibid.*, 424.

any of the kinds of food set forth in the Schedule, in quantities other than 2 ozs., 4 ozs., 8 ozs., 1 lb., or multiples of 1 lb., unless the article is either weighed in the purchaser's presence immediately before it is delivered to him or is delivered to the purchaser accompanied by a legible statement of its weight (l). [888]

Meat.—Butchers' meat, which includes liver (but not heads, feet, hearts, lights, kidneys, sweetbreads, bacon, ham, preserved beef or cooked meat) (m) must be sold by retail net weight (n). Bacon and ham must be sold by net weight, except where weighed for sale in a wrapper or container of not more than the prescribed maximum weight (o). When butchers' meat is delivered to a purchaser it must be accompanied by a legible statement of the net weight on which the purchase price is based, unless the meat is delivered to the purchaser at the vendor's premises immediately after it has been weighed in the purchaser's presence. There is a special proviso applying to the delivery of meat which is boned or trimmed before delivery (p). It will be noticed that the sale of meat "by price," e.g. under a notice "these joints 5s. 6d. each," is unlawful if the price is not calculated on the weight of each joint and if the purchaser is not told the weight of what he buys. [889]

Bread.—Bread must not be sold by retail or offered for sale except by net weight (q), and a loaf must not, therefore, be sold, e.g. as a "three-penny loaf," without reference to its weight. Further, loaves must not be sold, or be in possession for sale or delivery, unless they are of the net weight of one pound or an integral number of pounds (q). But the above provisions do not apply to fancy bread or to loaves not exceeding twelve ounces in weight (q).

For a loaf to fall within the exemption of "fancy bread," it should be of a shape so different from that of ordinary bread as not to be capable of being mistaken for an ordinary loaf. The mere fact that a loaf contains a proportion of milk or sugar does not make it "fancy" bread if it has the outward appearance of an ordinary loaf (r).

Every person selling bread by retail or having bread in his possession for sale must keep in a conspicuous part of his shop or premises a correct and suitable weighing instrument and must at the request of a purchaser or an inspector weigh the bread or permit the inspector to weigh it (q). There is not now any obligation on a baker to provide weights and scales for barrows or carts from which bread is delivered to customers.

It is an offence to deliver bread of short weight or to misrepresent the weight of bread. But the provisions of the Act do not apply to wholesale transactions unless the bread is pre-packed in wrappers ready for sale. [890]

Milk.—The sale of milk of short measure may be an offence under sect. 1 of the Act of 1926 (s) or in some instances under sect. 3 of that Act (s). In addition, a vendor of milk is under an obligation not to sell

(l) S. 4 (4); 20 Halsbury's Statutes 420.

(m) S. 13; *ibid.*, 426.

(n) S. 5; *ibid.*, 421.

(o) Sched. I., Part II.; 20 Halsbury's Statutes 427.

(p) S. 5; 20 Halsbury's Statutes 421.

(q) S. 6; *ibid.*

(r) *Bailey v. Barsby*, [1909] 2 K. B. 610; 25 Digest 120, 427.

(s) 20 Halsbury's Statutes 419.

milk by retail in quantities other than half a pint or multiples of half a pint; nor may he have in his possession, for sale or delivery on sale, any bottled or pre-packed milk except in the prescribed quantities. These requirements apply to skimmed, pasteurised and "processed" milk, but not to dried or condensed milk (*t*). [891]

Exemptions.—The special provisions of sects. 4 to 7 of the Act (applying to scheduled articles of food, butchers' meat, bread and milk respectively) do not apply to the sale or offering for sale of any article of food for consumption on the premises of the seller, nor to sales by the single pennyworth (or less) or sales in quantities purporting to be less than 2 ozs (*u*). Nevertheless, it remains an offence under sect. 1 of the Act to sell any article of food in any quantity less than the purported quantity. [892]

Prosecutions and Penalties.—When prosecutions are to be instituted for the various offences mentioned in earlier paragraphs, it is necessary to remember that the earlier Weights and Measures Acts are to be construed as one with the Sale of Food (Weights and Measures) Act, 1926, and therefore some of the provisions of that Act are applicable to the proceedings. This observation applies particularly to sub-sects. (5), (6), and (7) of sect. 12 of the Act of 1926 (*a*). An employer summoned for any offence under the older Weights and Measures Acts may lay an information against an employee or other person whom he alleges to be the actual offender. A retailer must, within seven days, receive notice of an offence with which he is to be charged, and any information against him must be laid within twenty-eight days of the occurrence of the offence alleged. And no prosecution may be instituted except by or on behalf of the Director of Public Prosecutions, or police authority, or a local authority.

The penalties for offences under the older Acts relating to weighing and measuring appliances, or under the Act of 1926 relating to the sale of food by weight or measure, are similarly affected by provisions to be found in the several Acts which have to be construed together. Thus, whereas for most offences the penalty is to be for a first offence a fine not exceeding £5; for a second offence a fine not exceeding £20; and for a subsequent offence a fine not exceeding £50 (*b*), it is always open to justices to impose imprisonment with or without hard labour for a term not exceeding two months if of opinion that the offence was committed with intent to defraud (*c*); and, for any offence, a court may cause the conviction to be published in such a manner as it thinks desirable (*d*). [893]

Sand and Ballast.—Since July 1, 1938, the sale and conveyance of sand and ballast have been regulated by the operation of the Weights and Measures Act, 1936 (*e*), and the Weights and Measures (Sand and Ballast) Regulations, 1938 (*f*). Subject to exceptions (one of which

(*t*) S. 7; 20 Halsbury's Statutes 422.

(*u*) Ss. 8 and 13; 20 Halsbury's Statutes 422, 426.

(*a*) 20 Halsbury's Statutes 425.

(*b*) Sale of Food (Weights and Measures) Act, 1926, s. 11; 20 Halsbury's Statutes 424.

(*c*) Weights and Measures Act, 1889, s. 4; 20 Halsbury's Statutes 396.

(*d*) *Ibid.*, s. 14; *ibid.*, 398.

(*e*) 29 Halsbury's Statutes 1023.

(*f*) S.R. & O., 1938, No. 236.

relates to quantities weighing less than one ton or measuring less than one cubic yard) all sand, ballast, shingle, gravel, ashes, clinker, hard-core, chippings and aggregates for constructional work must be sold by weight or in terms of a cubic yard or half-a-cubic yard; and contracts or agreements to convey those materials must be in similar terms of weight or measure. Vehicles used for conveying ballast, etc., under agreement in terms of weight must bear a tare-weight mark complying with the provisions of the regulations. The tare weight of the vehicle must be ascertained to the nearest half-hundredweight, weighed inclusive of the body, a full supply of water and fuel, and all normal parts, tools and equipment.

Similarly, subject to periods of allowance for vehicles constructed before April 1, 1938, vehicles used for conveying ballast, etc., sold by measure, and vehicles used as measures for ballast, etc., must bear the verification stamp of an inspector of weights and measures and are liable to periodical inspection by such inspectors.

A person in charge of a vehicle which is being used for conveying sand, ballast or the like, on a journey any part of which is along a highway, must carry a signed conveyance-note accurately indicating the weight or volume of the sand or ballast conveyed. It is an offence to sign or cause to be signed a conveyance-note which contains a materially incorrect statement. The form in which consignment notes are to be made out is prescribed by the regulations referred to above.

Inspectors of weights and measures are empowered (on production if required of documentary evidence of the fact that they are inspectors) to demand the production of a conveyance note, and also to inspect any vehicle used for conveying sand or ballast and to require the unloading and the measuring or weighing, as the case may be, of the material conveyed.

The regulations describe in detail the requirements which must be met by receptacles and vehicles used for the measuring of sand and ballast sold or conveyed by measure, and the conditions subject to which such measures are to be tested and stamped. [894]

London.—The Weights and Measures Acts apply to London with the following modifications.

The Weights and Measures Act, 1878, sect. 67 (*g*), contains a saving for the rights of the Founders' Company. This company had charter rights as to stamping weights, but their powers are not now exercised. Sect. 68 of the Act (*g*) contains a saving for the rights of the City with respect to stamping or sealing of weights and measures and with respect to the gauging of wine, oil or other gaugeable liquors. Powers of gauging were conferred on the Lord Mayor by the Weights and Measures Act, 1824 (*h*). Sect. 17 of the Weights and Measures Act, 1889 (*h*), provides that notwithstanding anything in sects. 67 and 68 of the Act of 1878 (*i*), persons using weights or measures in the City of London shall not be required to have their weights or measures verified or stamped by more than one authority. Sect. 16 of the Act of 1889 (*k*) provides that inspectors appointed by the L.C.C. shall alone within the county, exclusive of the City, have the powers and duties of inspectors of weights and measures appointed under the principal Act. The City appoints its own inspectors.

(*g*) 20 Halsbury's Statutes 386.

(*i*) 20 Halsbury's Statutes 399.

(*h*) 11 Halsbury's Statutes 880.

(*k*) *Ibid.*, 398.

Under the L.C.C. (General Powers) Act, 1928, s. 55 (l), the Weights and Measures Act, 1889, Part II. (Sale of Coal) (m), in its application to the county extends to coke as well as coal. Under sect. 56 (l) a penalty is imposed for wilfully increasing the weight of coke by damping, etc. The sect. is to be read as forming part of Part II. of the Act of 1889 (m). See also title COAL WEIGHING. [895]

(l) 11 Halsbury's Statutes 1415.

(m) 20 Halsbury's Statutes 399.

WEIGHTS AND MEASURES, INSPECTOR OF

See INSPECTORS OF WEIGHTS AND MEASURES.

WELFARE OF THE BLIND

See BLIND PERSONS.

WELSH BOARD OF HEALTH

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Constitution.—The Welsh Board of Health was formed under the M. of H. Act, 1919 (a), as from July 1, 1919 (a). It acts, under the directions of the Minister of Health, as the central authority in Wales (b) for the administration of national health and pensions insurance and of the health functions delegated to it from time to time by the Minister.

The power to form a Welsh Board of Health is derived from sect. 5 of the M. of H. Act, 1919 (a), which requires that the Minister of Health shall appoint such officers as he may think fit to constitute a Board of Health in Wales, through whom he may exercise and perform in Wales, in such manner as he may think fit, any of his powers and duties. The constitution and functions of the Board are thus matters which are determined by the Minister, and it was the intention in 1919 that the range of functions of the Board should be extended as it gained in experience and established close relations with the health authorities of Wales (c).

(a) S. 5; 3 Halsbury's Statutes 419.

(b) For the purposes of the M. of H. Act, 1919, Monmouthshire is deemed to form part of Wales: see s. 11 (3); *ibid.*, 421.

(c) The Board was reconstituted with effect from February 1, 1940. Its present members are Mr. I. F. Armer, M.C., Mr. T. W. Wade, M.D., and Captain J. Glynn-Jones, O.B.E., M.C.

In the administration of National Health Insurance the Board was the successor of the Welsh Insurance Commissioners, established under sect. 82 of the National Insurance Act, 1911 (*d*), whose powers and duties were transferred to the M. of H. on the formation of the Ministry in 1919. The Board also acts for the Minister in Wales in the administration of the Widows', Orphans' and Old Age Contributory Pensions Acts, 1936-40 (*e*).

For the outdoor officers of the Board, Welsh speaking is an essential qualification, and the various leaflets and notices of the Board are issued in the Welsh language. Welsh is also the medium of correspondence where letters are addressed to the Board in the native language, and officers of the Board are frequently asked to address conferences conducted entirely in the Welsh language. [896]

Functions.—Except for the making and confirmation of bye-laws and certain matters relating to local finance (as well as the treatment of persons of unsound mind and mental defectives which is a matter for the Board of Control (*f*)) practically all the functions of the Minister of Health so far as concerns Wales and Monmouthshire are exercised through the Board. The public health, poor law and local government functions were transferred at various dates and the successive transfers announced to local authorities in M. of H. Circulars as follows:—

I. Functions transferred as from October 1, 1920 (M. of H. Circular 136, dated September 30, 1920):

- (1) sanction to the appointments of M.Os.H., sanitary inspectors and inspectors of nuisances;
- (2) venereal diseases;
- (3) isolation hospitals;
- (4) infectious diseases;
- (5) maternity and child welfare;
- (6) (i.) the Sale of Food and Drugs Act;
- (ii) milk supply;
- (iii.) food inspection;
- (iv.) slaughter-houses;
- (v.) markets, etc.
- (7) appointment of public analysts and officers under Food Acts and regulations. [897]

{ excepting matters directly affecting consumers and public authorities in England, or involving relations with other parts of the Empire or with foreign countries, *i.e.* (a) imported foodstuffs; (b) shell fish; (c) statistics from public analysts' reports.

II. Functions transferred following the passing of the L.G.A., 1929 (M. of H. Circular 1193, dated April 20, 1931):

- (1) surveys of the public health services in Wales for the purpose of sect. 104 of the L.G.A., 1929 (*g*);
- (2) all proposals relating to poor law medical work (with the exceptions indicated below) and the provision of new hospital accommodation under the P.H.As. The exceptions referred to are proposals relating to the superannuation and compensation of officers, and questions (*e.g.* as to status, tenure

(*d*) 1 & 2 Geo. 5, c. 55 (repealed).

(*e*) 1936 (the Principal Act); 29 Halsbury's Statutes 1198; 1937 (Voluntary Contributors); 30 Halsbury's Statutes 997; 1939 (Emergency Provisions); 32 Halsbury's Statutes 1076; 1940 (3 & 4 Geo. 6, c. 13).

(*f*) See title BOARD OF CONTROL.

(*g*) 10 Halsbury's Statutes 883.

of office, powers of council in regard to remuneration or dismissal and conditions of service generally) which may arise under sect. 121 of the L.G.A., 1929 (*h*), in regard to the position of officers transferred to the service of councils under sect. 119 (*i*) of that Act. The transferred poor law medical work covers :

- (i.) the administration of outdoor medical relief ;
- (ii.) the appointment, dismissal, tenure of office, conduct and conditions of service (with the exceptions indicated above) of (a) medical officers, (b) nurses, (c) dispensers, (d) all other officers of institutions for the sick (excluding persons of unsound mind and mental defectives), and sick wards of other institutions ;
- (iii.) the approval of poor law institutions for teaching probationer nurses ;
- (iv.) infectious diseases in poor law institutions ;
- (v.) the provision, extension or alteration of all accommodation for the sick (excluding persons of unsound mind and mental defectives). [898]

III. Services for the welfare of the blind (except matters relating to old age pensions for the blind under the Blind Persons Acts, 1920 and 1938 (*k*), transferred as from January 1, 1935 (M. of H. Circular 1449, dated December 17, 1934). [899]

IV. Poor law functions other than those referred to in II (2) above, *i.e.* non-medical poor law work, except questions relating to the superannuation and compensation of officers, transferred as from April 1, 1937 (M. of H. Circular 1601, of February 22, 1937). [900]

V. Functions transferred as from May 1st, 1940 (M. of H. Circular 2005, dated April 26, 1940) :

- (1) Housing and town planning.
- (2) Private street works.
- (3) Local sanitary and other services (including water supply, sewerage and sewage disposal) as set out in the Schedule below.
- (4) Constitution and alteration of local government and other areas.

SCHEDULE.

Sewerage and Sewage Disposal ; Surface and Storm Water Drainage ;
 Culverting Streams.
 Water Supply.
 Burial Grounds and Burials (other than registers and fees) ; Crematoria.
 Ambulances.
 Fire Stations and Appliances.
 Inebriate Reformatories.
 Lighting of Streets.
 Markets.
 Military Lands.
 Police Buildings (except erection of police dwellings by County Councils).
 Public Libraries.
 Public Offices and Halls.
 Baths and Washhouses.
 Conveniences.

(*h*) 10 Halsbury's Statutes 961.

(*i*) *Ibid.*, 960.

(*k*) 20 Halsbury's Statutes 593 ; 31 Halsbury's Statutes 812.

Public Cleansing, including Refuse Collection and Disposal and the Scavenging of Streets.

Public Walks and Pleasure Grounds, Open Spaces, Playing Fields, Gymnasiums, Camp Sites, etc.

Sea Defences and Promenades.

Transactions with respect to Corporate Lands.

River Pollution ; Drainage of Trade Premises.

Privy Conversions.

Nuisances and Offensive Trades.

Sanitary conditions in shops, offices and theatres.

Smoke Abatement.

Urban Powers.

"Special" Expenses.

Adoption of provisions in the P.H.As. Amendment Act, 1890 (*l*), and the Public Health Act, 1925 (*m*).

Conferring Urban powers on R.D.C.

Investing Urban Authorities with powers of Parish Councils under sect. 271, Local Government Act, 1933 (*n*), and Urban or Rural Authorities with powers of P.H.As. Amendment Act, 1907 (*o*).

Approval of salaries of Clerks of County Councils under the Local Government Act, 1933 (*p*).

Appointment and tenure of office of Public Vaccinators and Vaccination Officers ; approval of alteration of district and salaries. [901]

Correspondence.—The local authorities in Wales communicate direct with the Board at Cathays Park, Cardiff, on proposals for capital expenditure, dealings in land and other matters relating to the services which fall within its administration, other than the making and confirmation of bye-laws, correspondence on which should continue to be addressed to the M. of H., Whitehall. [902]

Tuberculosis.—See title WELSH NATIONAL MEMORIAL ASSOCIATION.

General.—It is the practice of the Minister to consult the Board on matters which raise questions of policy so far as concerns Wales, and the successive steps above-mentioned mean that day to day administration of most of the Minister's functions affecting Wales will be in the Board's hands. Among matters retained in the Minister's direct control may be mentioned local government finance (including audit), bye-laws and reports to Parliament on local legislation.

The law of public health and local government is the same for England as for Wales, and most of the regulations, circulars and forms issued under the authority of the Minister have equal application in England and in Wales. In respect of the functions delegated to it, the Board has direct relationship with the local authorities of Wales and is vested, under the Minister, with separate administrative powers. Close co-operation is maintained between officers of the Board and of the Ministry at London. [903]

(*l*) See s. 3 ; 13 Halsbury's Statutes 824.

(*m*) See ss. 3—5 ; *ibid.*, 1116, 1117.

(*n*) 26 Halsbury's Statutes 450.

(*o*) See s. 3 ; 13 Halsbury's Statutes 911.

(*p*) S. 99 ; 26 Halsbury's Statutes 358.

THE KING EDWARD THE SEVENTH WELSH NATIONAL MEMORIAL ASSOCIATION ^(a)

(THE PREVENTION, TREATMENT AND ABOLITION OF TUBERCULOSIS)

(1) Wales and Monmouthshire constitute one unit for the treatment of tuberculosis ^(b). The King Edward the Seventh Welsh National Memorial Association (although formed in 1910 as a voluntary organisation and still classified by the L.G.A., 1929 ^(c), as a "voluntary association") now acts, mainly, as the statutory agent of the county and county borough councils (seventeen in number) for this purpose.

Constituted by Royal Charter in 1912, the position of the Association in relation to the respective councils depended originally upon provisions contained in the National Insurance Acts, 1911 ^(d) (sect. 84 (2)), and 1913 (sect. 42 (2)), and agreements made with each council thereunder. There were supplementary Charters in 1917 and 1923.

The association also carried out for insurance committees the statutory duties with regard to "sanatorium benefit" formerly vested in those committees. [904]

(2) By the P.H. (Tuberculosis) Act, 1921 ^(e), the treatment of tuberculosis was made a statutory duty of county and county borough councils; by sect. 1 (1), councils in Wales which had made approved agreements with the association were deemed to have made adequate arrangements for the treatment of tuberculosis. [905]

(3) Under the L.G.A., 1929, the grants made by the Exchequer to the Association (including those specified in the Fourth Schedule, Part II., para. 5 (b) ^(f)) were discontinued and merged in the general Exchequer grants payable to the councils.

The Local Government (Calculation of Rate-borne Expenditure, etc.) Regulations, 1932 ^(g), applied as though the association were a local authority having power to issue precepts on the councils of counties and county boroughs in Wales, and any contributions made by such a council to the association were to be treated as expenditure of the council made under precept (Part V., Art. 20).

The Discontinued Grants (Apportionment) Order, 1930 ^(h), provided that the discontinued Exchequer grants to the association in respect of tuberculosis services were to be apportioned between the counties and county boroughs concerned in proportion to the population of the several counties and county boroughs. [906]

(4) Sect. 102 (3) of the L.G.A., 1929 ⁽ⁱ⁾, provides:

"The Minister shall before the beginning of each fixed grant period, after consultation with the councils of counties and county boroughs

(a) Principal Office: Cathays Park, Cardiff.

(b) M. of H. Act, 1919, s. 11 (3); 3 Halsbury's Statutes 421.

(c) Ss. 85 (2), 102 (3); 10 Halsbury's Statutes 937, 948.

(d) 1 & 2 Geo. 5, c. 55 (repealed).

(e) 18 Halsbury's Statutes 971 (repealed). See now P.H.A., 1936, ss. 171—175; 29 Halsbury's Statutes 443—446.

(f) 10 Halsbury's Statutes 983.

(g) S.R. & O., 1932, No. 160.

(h) S.R. & O., 1930, No. 59.

(i) 10 Halsbury's Statutes 948.

in Wales and Monmouthshire, make a scheme for the payment by those councils to the King Edward the Seventh Welsh National Memorial Association of contributions of such amount as may be specified in the scheme towards the expenses of the services in connection with the treatment of persons suffering from tuberculosis provided by the association." [907]

(5) On March 25, 1937, the Minister of Health made a scheme for the third fixed grant period (the five years 1937-1942).

The scheme provides that the county and county borough councils shall pay to the association certain specified annual contributions (which include loan charges in respect of capital expenditure approved by the Minister). The contributions are to be apportioned and paid by the councils as to 50 per cent. according to population and as to the remaining 50 per cent. according to rateable value. It is a condition of the payments under the scheme, *inter alia*, that the association shall continue to make adequate arrangements for the treatment of tuberculosis, shall submit estimates to the Minister and councils, and shall keep accounts in approved form and submit them for audit as required by the Minister. [908]

(6) By sect. 128 (2) of the L.G.A., 1929 (*k*), the council of any county or county borough in Wales or Monmouthshire may, with the consent of the Minister, lend to the association any money required by the association for the purposes of capital expenditure which the association has power to borrow, subject to any conditions which the Minister may impose. [909]

(7) By an Order of the High Court of Justice, Chancery Division, dated November 15, 1930 (1930, K. No. 698), the association may, with the sanction of the M. of H., borrow for capital expenditure and other purposes on the security of the revenues of the association (including the contributions payable to the association by local authorities under the scheme of the Minister). Where the sum proposed to be borrowed amounts to £10,000 or over, and in any other case where the Minister thinks fit, an inquiry by an inspector of the Minister shall be held. [910]

(8) Under the authority of the said order of the High Court the association established a superannuation fund in respect of its officers and workmen. By the King Edward the Seventh Welsh National Memorial Association Act, 1939 (*l*), the L.G. Superannuation Acts, 1937 (*m*) and 1939 (*n*), were applied to the Association and its staff. [911]

(9) The executive body of 76 members controlling the association is the council, which is constituted as follows :

Direct representatives appointed by the seventeen	
county and county borough councils	52
Members co-opted by the Board of Governors and	
Council	16
Members appointed by the M. of H.	4
<i>Ex-officio</i> : President, Vice-Presidents (2), and Treasurer	4

[912]

(*k*) 10 Halsbury's Statutes 968.

(*m*) 30 Halsbury's Statutes 385.

(*l*) 2 & 3 Geo. 6, c. 27.

(*n*) 32 Halsbury's Statutes 247.

WHIRLIGIGS

See ROUNDABOUTS.

WIDENING OF STREETS

See ROAD IMPROVEMENT.

WIDOWS', ORPHANS' AND OLD AGE PENSIONS

See OLD AGE PENSIONS COMMITTEES ; ORPHANS' PENSIONS.

WILD BIRDS

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DEFINITIONS - - -	439	ADMINISTRATIVE ARRANGEMENTS	443
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See also title : TRAPS.

Introductory.—The object of the legislation relating to wild birds is the preservation of wild birds and their eggs, coupled with some measure of control of wild birds in the interests of agriculture. The statutes at present in force are: The Wild Birds Protection Acts, 1880, 1881, 1894, 1896, 1902, 1904 and 1908, the Protection of Lapwings Act, 1928 (*a*), the Protection of Birds Act, 1933 (*b*), and the Quail Protection Act, 1937 (*c*), and the Wild Birds (Duck and Geese) Protection Act, 1939 (*d*). The Sand-Grouse Protection Act, 1888 (*e*), provided absolute protection for the sand-grouse between February 1, 1889, and January 1, 1892; this statute, though not repealed, appears to be spent, and this bird is now included in at least one local order made under the Wild Birds Protection Acts. [913]

Definitions.—The Wild Birds Protection Act, 1880, sect. 2 (*f*), defines "wild birds" as meaning all wild birds. This definition does not in terms exclude game birds.

The Game Act, 1831 (*g*), refers to pheasants, partridge, grouse, blackgame and bustards. The Poaching Prevention Act, 1862 (*h*), includes in its definition woodcock and snipe, which are clearly wild birds, being included in the Schedule to the Wild Birds Protection Act, 1880 (*i*). [914]

Statutory Provisions.—The Wild Birds Protection Act, 1880, sect. 3 (*k*), makes it an offence triable summarily for any person between

(*a*) For these statutes see 1 Halsbury's Statutes 355—366.

(*b*) 26 Halsbury's Statutes 53.

(*c*) 30 Halsbury's Statutes 787.

(*e*) 1 Halsbury's Statutes 359.

(*g*) 8 Halsbury's Statutes 1066.

(*i*) 1 Halsbury's Statutes 358.

(*d*) 32 Halsbury's Statutes 79.

(*f*) *Ibid.*, 356.

(*h*) *Ibid.*, 1091.

(*k*) *Ibid.*, 356.

March 1 and August 1 to shoot or attempt to shoot, or use a boat for the purpose of shooting or causing to be shot, or use any lime, trap, snare, net or other instrument for the purpose of taking any wild bird, or to expose or offer for sale or have in one's control or possession after March 15 in any year any wild bird recently killed or taken. The Act of 1939 (l) varies this close time in relation to wild duck (other than merganser and geese) and geese.

The penalty is—for any bird included in the Schedule to the Act of 1880 (m), not exceeding £1 per bird, and for any other birds a reprimand and payment of costs on the first offence, and for subsequent offences a maximum fine of 5s. per bird in addition to the costs.

The section does not prevent the owner or occupier of land or any person authorised by him, killing or taking on such land, birds not included in the Schedule (n). Farmers and others are thus enabled to protect their seeds and crops against the more common and more mischievous wild birds.

The further exceptions provided in the section were repealed by an amending Act of 1881, and a provision substituted to the effect that a person should not be convicted under sect. 3 of the 1880 Act for exposing or offering for sale or having control or possession of any recently killed wild bird if he proves that the killing was lawful, or that the bird was killed in some place to which the Act did not extend (and importation from such a place is *prima facie* evidence that the bird was killed in such a place (o)).

Sect. 4 of the Act of 1880 (p) authorises any person to demand the name and address of an offender, and provides a penalty on conviction for non-compliance.

Sect. 5 (q) applies (in England) the procedure of the Summary Jurisdiction Acts.

Sect. 6 (q) provides that offences committed within Admiralty juris-

(l) 32 Halsbury's Statutes 79.

(m) 1 Halsbury's Statutes 358.

(n) See *Warr v. Gilham* (1884), 49 J. P. 357; 2 Digest 283, 559. An important case, deciding that a defendant who in the close season netted sparrows on land not in his own occupation was liable to conviction, although no evidence was called to negative authority by the owner and occupier. It further decided that when the same sparrows were liberated and shot on A.'s land by A. and his friends with A.'s authority, the saving clause in s. 3 of the 1880 Act did not apply, and that A. could be convicted, the saving clause only allowing owner and occupier of land to take birds on that land, and not to kill on that land birds taken elsewhere (even, *per* HAWKINS, J., if taken on other land of A.). As to wild geese, see p. 442, *post*.

(o) As to the application of the proviso and as to onus of proof, see *Green v. Carstang* (1901), 66 J. P. 102; 2 Digest 283, 553. Three points were decided. First, that birds taken three weeks previous to the offence charged could be held to be "recently taken" within the meaning of s. 3 of the 1880 Act; second, that the 1881 Act applied only to birds recently "killed" as opposed to "taken," and that with regard to the latter, s. 3 of the 1880 Act applied, but without the proviso repealed in 1881; and third, that in the latter case, it was for the prosecution to prove that the birds concerned were in fact "wild birds" and had been recently taken. See also *R. v. Hopkins, Ex parte Lovejoy* (1911), 75 J. P. 340; 2 Digest 283, 563, where an interval of seven weeks elapsed between the taking and the charge of having in possession; the magistrate held that the birds were not recently taken and the Divisional Court refused to interfere, as the matter was one of fact for the magistrate to decide. In *Harris v. Lucas* (1919), 83 J. P. 208, where birds caught in Ireland were sent to London six weeks later, the delay being to accustom them in some measure to captivity and reduce the risk of loss or damage likely to be caused by dispatch immediately after capture, it was held that the magistrate was entitled to consider the reason for the lapse of time, and might hold that in such circumstances six weeks was "recent" (*Flower v. Watts* (1910), 74 J. P. 302; 2 Digest 283, 564, followed).

(p) 1 Halsbury's Statutes 356.

(q) *Ibid.*, 357.

diction may be tried in any place in the United Kingdom where the offender may be found.

Sect. 8 (*r*) enables the Secretary of State, on the application of justices in quarter sessions (now the county council (*s*)), by order to extend or vary the statutory "close time," but this section is varied by the 1939 Act (*t*) in relation to wild duck (except as above) and geese.

The Schedule (*u*) contains a list of the birds to which the Act gives full protection.

The Wild Birds Protection Act, 1881 (*a*), amended sect. 3 of the 1880 Act as noted above, and added the lark (*b*) to the Schedule.

The Wild Birds Protection Act, 1894 (*c*), provides (sect. 2) that upon the application of a county council the Home Secretary may prohibit the taking or destroying of wild birds' eggs in any year or years in any place or places in the county or the taking or destroying of the eggs of any specified kind of wild bird in the county or part or parts thereof, and (sect. 3) may by order add birds to the protected list set out in the Schedule to the Act of 1880.

Sect. 4 requires annual advertisement (*d*) of any order made under this Act and sect. 5 prescribes penalties.

The Wild Birds Protection Act, 1896 (*e*), extends the power of the Home Secretary under sect. 8 of the Act of 1880 (*r*), and enables an order to be made prohibiting the taking or killing of particular kinds of wild birds during the whole or any part of that period of the year to which the protection of wild birds under the Act of 1880 does not extend, or the taking or killing of all wild birds in particular places during the whole or any part of that period.

The Act of 1902 (*f*) gives the court power to order forfeiture of bird or egg in respect of which an offence is committed.

The Act of 1904 (*f*) makes it illegal to set a trap on a pole, tree or cairn of stones; and the Act of 1908 (*g*) makes it illegal to use a hook or similar instrument to take a wild bird.

The Protection of Lapwings Act, 1928 (*h*), declares it unlawful between March 1 and August 31 to sell any lapwing (also called green plover, peesweep or peewit) or to have in possession for the purpose of sale for human consumption or to sell for human consumption, or have in possession for sale for that purpose, any egg of the lapwing.

With regard to the lapwing, sect. 3 of the 1880 Act (*i*), so far as it relates to the sale or possession of wild birds, ceases to have effect (*j*).

(*r*) 1 Halsbury's Statutes 357.

(*s*) See L.G.A., 1888, s. 3 (xiii.); 10 Halsbury's Statutes 689.

(*t*) See p. 442, *post*.

(*u*) 1 Halsbury's Statutes 358.

(*a*) *Ibid.*, 359.

(*b*) As to the sale of live larks in a district where the bird is protected by order, the birds having been lawfully taken in another district, see *Flower v. Watts* (1910), 74 J. P. 302; 2 Digest 283, 564. Larks were taken alive in Cambridgeshire in November and the taking was lawful because no order extending the close time for larks was then in force. The larks were sold alive in London where an order giving protection throughout the year was in operation. It was held that the seller in London was rightly convicted for having larks "recently taken" in his possession (1881 Act not applying, see *Green v. Carstang*, p. 440, *ante*).

(*c*) 1 Halsbury's Statutes 360.

(*d*) The statutory publication of an order under the 1894 Act is not a condition precedent to a prosecution under the 1880 Act as varied by the order (*Duncan v. Knill* (1907), 71 J. P. 287; 2 Digest 283, 560).

(*e*) 1 Halsbury's Statutes 362.

(*f*) *Ibid.*, 363.

(*g*) *Ibid.*, 364.

(*h*) *Ibid.*, 366.

(*i*) *Ibid.*, 356.

(*j*) See s. 1 of Act of 1928; 1 Halsbury's Statutes 366, where the editorial note should be perused for cross-references to the Wild Birds Protection Acts, 1880-1908.

The Protection of Birds Act, 1933 (*k*), prohibits (a) the capture of any wild bird to which the Act applies with the intention that it shall be sold alive, and (b) the sale or possession for sale of any live bird to which the Act applies, other than close-ringed specimens bred in captivity. The Act applies to a list of birds set out in the schedule—being British species, *i.e.* which reside in or visit Great Britain in a wild state.

The Quail Protection Act, 1937 (*l*), prohibits the importation into the United Kingdom of any live quail between February 14 and July 1 in any year; provision is made for appropriate action by the Commissioners of Customs.

The Wild Birds (Duck and Geese) Protection Act, 1939 (*m*), fixes a minimum close time for wild duck (other than merganser and goosander) from February 1 to August 11 inclusive, and makes it illegal to expose or offer for sale or to have control or possession of any recently killed wild duck or geese after February 28 in any year.

The Act does not affect the power to make orders under the 1880 Act (*supra*) extending the close season, but no order can be made exempting any county or district, or shortening the close season, except that by order the close time in tidal areas can be postponed to any date not later than February 21.

The Act adds wild geese to the Schedule to the Act of 1880, thus giving them full protection as against owners and occupiers of land, but an order under the Acts may waive this protection.

Sect. 3 prohibits the importation of dead wild duck and geese during the statutory close season and repeals (with qualification) for this purpose sect. 1 (2) of the 1881 Act. [915]

Wild Birds Protection Orders.—An order under sect. 8 of the Act of 1880 (*n*) may be made without limit of time, as also an order under sect. 2 (2) and (3) of the Act of 1894 (*o*), but an order under sect. 2 (1) of the Act of 1894 (*o*) must be limited in point of time and of place.

Under sect. 1 of the Act of 1896 (*p*) an order can be unlimited in time so far as protection of particular birds is concerned, but if applied to all wild birds it must be limited to "particular places."

As most of the orders now in operation are believed to include provisions under several of the Acts, the H.O. generally makes them for limited periods and renews them from time to time.

Many orders now have effect in one way or another, throughout the year. This makes the application of sect. 4 of the 1894 Act (*q*) far from easy. Probably the best course is to publish the order during the three weeks previous to the commencement of the general "close time" fixed by the order.

In districts where the shooting or taking of duck and other non-game birds is a matter of importance, the interests concerned may usefully be consulted when a local order is in course of preparation, and similarly agricultural committees may be asked to advise on the degree of protection to be afforded to birds which may prove troublesome to farmers, fruitgrowers and market gardeners. The H.O. will discuss draft orders with the local authority affected, and it is advisable for the local

(*k*) 26 Halsbury's Statutes 53.

(*m*) 32 Halsbury's Statutes 79.

(*o*) *Ibid.*, 360.

(*l*) 30 Halsbury's Statutes 787.

(*n*) 1 Halsbury's Statutes 357.

(*q*) *Ibid.*, 361.

(*p*) *Ibid.*, 362.

authority to do so, since the statutory publication is unavoidably expensive. [916]

Administrative Arrangements.—The Wild Birds Protection Acts do not contain any detailed provision as to administrative arrangements. Before the L.G.A., 1888, the administration of these statutes was entrusted to quarter sessions, but by sect. 3 (xiii.) of that Act (*r*) this function was transferred to county councils, and sect. 3 of the Wild Birds Protection Act, 1896 (*s*), makes it clear that a county borough council can exercise the powers of a county council under the Wild Birds Protection Act.

Normally, wild birds' protection functions are exercised through a committee appointed under sect. 85 of the L.G.A., 1933 (*t*), and advantage may be taken of sect. 85 (3) to include on the committee representatives of organisations interested in, or possessing special knowledge of, wild birds. Usually, there is no need to appoint special officers to administer the Wild Birds Protection Acts, and control is generally exercised through the police. Valuable educational work dealing with the protection of wild birds and their eggs can be effected through schools and through agricultural advisory officers; and in this connection the advisory leaflets issued by the M. of A. will be found useful in helping to create a healthy state of public opinion.

The expenses of administering the Wild Birds Protection Acts fall, in a county, on the county fund as expenses for general county purposes, and in a county borough, on the general rate fund; no Government grants are available. [917]

London.—The L.C.C. is the authority for executing in London the Wild Birds Protection Acts, 1880 to 1908 (*u*).

Among the matters on which the Port of London Authority may make bye-laws under sect. 279 of the Port of London (Consolidation) Act, 1920 (*x*), are preventing bird catching, nesting, trapping, searching for and taking or destruction of birds' nests or eggs on or about the Thames. A saving is provided for sporting rights. [918]

(*r*) 10 Halsbury's Statutes 689.

(*s*) 1 Halsbury's Statutes 362.

(*t*) 26 Halsbury's Statutes 352.

(*u*) L.G.A., 1888, ss. 3 (xiii.), 40 (2); 10 Halsbury's Statutes 689, 718.

(*x*) 18 Halsbury's Statutes 681.

WIRELESS

PAGE				PAGE			
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See also titles: BLIND PERSONS;
NOISE;
NUISANCES.

Prevention of Danger or Obstruction.—Where sect. 26 of the P.H.A., 1925 (*a*), has been adopted (*b*) by a local authority (*c*) or applied by

(*a*) 13 Halsbury's Statutes 1124.

(*b*) Such adoption is by resolution of the local authority in accordance with the provisions of the Third Schedule of the Act (P.H.A., 1925, ss. 2—5; 13 Halsbury's Statutes 1115—1117).

(*c*) "Local authority" means an urban sanitary authority, U.D.C. or R.D.C.;

order of the M. of H. to a rural district or contributory place in a rural district (*d*), such local authority may make bye-laws for the prevention of danger or obstruction to persons using any street (*e*), or public place from posts, wires, tubes, aerials or any other apparatus in connection with or for the purpose of wireless telegraphy or telephony installations stretched or placed (whether before or after the date when the section came into operation) on or over any premises and liable to fall on to any street or public place (*f*). "Public place" is here defined as including any public park or garden and any ground to which the public have or are permitted to have access, whether on payment or otherwise (*g*). Such bye-laws do not apply to any apparatus belonging to any statutory undertakers (*h*), nor does the Act affect any privilege of the Crown (*i*) or the Postmaster-General under the Telegraph Act, 1869 (*j*), or any works or apparatus belonging to him, or any power conferred on the Minister of Transport by the London Traffic Act, 1924 (*k*). Model bye-laws issued by the M. of H. for the guidance of local authorities contain a definition of "apparatus" as meaning posts, wires, tubes, aerials or any other apparatus in connection with or for the purpose of wireless telegraphy or telephony installations and provide that any person who stretches or places on or over any premises any apparatus liable to fall on to any street or public place must comply with certain requirements. These requirements are that the apparatus must be securely attached to adequate supports of durable material, that every support for the apparatus must be efficiently secured against forces due to ice-loading and wind pressure, that the apparatus, if attached to a chimney, wall, or other part of a building, must be efficiently supported by angle plates of iron or some other suitable device, and that the apparatus must be so stretched, placed and maintained as not to be dangerous or to cause obstruction to persons using any street or public place. The model bye-laws also provide for a penalty not exceeding five pounds for every offence against the bye-laws and a further penalty of forty shillings in the case of a continuing offence for each day after written notice of the offence from the local authority. [919]

P.H.A., 1907, s. 13 applied by P.H.A., 1925, s. 7 (1), Sched. IV. The expression "urban sanitary authority" was used in this definition to ensure that county borough councils were included in view of the fact that it was not free from doubt whether a county borough council could be regarded as an U.D.C. For full explanation of this point, see note to s. 13 in Lumley's Public Health (10th ed.), Vol. II., p. 1109, and title PUBLIC HEALTH.

(*d*) P.H.A., 1925, s. 4.

(*e*) "Street" includes any highway, any public bridge (not being a county bridge) and any road, lane, footway, square, court, alley or passage whether a thoroughfare or not (P.H.A., 1875, s. 4; 13 Halsbury's Statutes 625). P.H.A., 1875, s. 4, is still in force for the purposes of Acts which are construed with that Act. See P.H.A., 1936, Sched. III., Part I. (2); 29 Halsbury's Statutes 545.

(*f*) P.H.A., 1925, s. 26 (1); 13 Halsbury's Statutes 1124.

(*g*) See also *ibid.*, s. 25; *ibid.*, 1123, as to consents for, *inter alia*, wires over, along, or across any street. Such consents are commonly needed for wires in connection with a "wireless relay" system. The important point to remember is that the local authority has no power to charge a fee.

(*h*) *Ibid.*, s. 26 (2). "Statutory undertakers" means any person authorised by Parliament to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking (*ibid.*, s. 7 (3)).

(*i*) *Ibid.*, s. 7 and Sched. IV. which applies s. 12 of the P.H.As. Amendment Act, 1907.

(*j*) 19 Halsbury's Statutes 251.

(*k*) *Ibid.*, s. 10.

Prevention of Nuisance.—By sect. 249 of the L.G.A., 1933 (*l*), county councils and borough councils may make bye-laws for the good rule and government of the whole or any part of their area and for the suppression of nuisances; but where by or under any enactment in force in any area provision is made for the prevention and suppression in a summary manner of any nuisance, the power to make bye-laws for that purpose under the section is not exercisable in such area.

Urban and rural district councils are empowered to enforce bye-laws made by a county council in their district (*m*), but no bye-laws made by a county council have effect in any borough (*n*).

Such bye-laws may contain provisions for imposing on persons offending against them, reasonable fines recoverable on summary conviction not exceeding five pounds and in the case of a continuing offence, a further fine not exceeding forty shillings for each day during which the offence continues after conviction (*o*).

Forms of bye-laws have been issued by the H.O. for the guidance of county councils and borough councils and include a form of bye-law relating to wireless loudspeakers. This form provides that no person shall (*i*.) in any street or public place or in connection with any shop, business premises or other place which adjoins any street or public place and to which the public are admitted, or (*ii*.) upon any other premises by operating or causing or suffering to be operated any wireless loudspeaker, gramophone, amplifier or similar instrument, make or cause or suffer to be made any noise which is so loud and so continuous or repeated as to cause nuisance to occupants or inmates of any premises in the neighbourhood. No proceedings are to be taken, however, against persons for any offence under paragraph (*ii*.) unless the nuisance is continued after one fortnight from the date of service on such person of a notice alleging the nuisance and signed by not less than three householders residing within the hearing of the instrument. [920]

London.—The London Overground Wires, etc., Act, 1933 (*p*), provides for the control of overground wires over or near streets. See title OVERHEAD WIRES.

Bye-laws to deal with nuisances from wireless loud speakers have been made by some of the metropolitan borough councils under the Municipal Corporations Act, 1882, sect. 23, and L.G.A., 1888, sect. 16(*q*). See now Part VIII. of the London Government Act, 1939 (*r*). See title GOOD RULE AND GOVERNMENT. [921]

(*l*) 26 Halsbury's Statutes 439. As to procedure in making bye-laws and as to their validity and construction, see title BYE-LAWS.

(*m*) L.G.A., 1933, s. 249 (5); 26 Halsbury's Statutes 440.

(*n*) *Ibid.*, s. 249 (1), proviso; *ibid.*, 439.

(*o*) *Ibid.*, s. 251; *ibid.*, 442.

(*p*) 26 Halsbury's Statutes 604.

(*q*) 10 Halsbury's Statutes 584 and 698; repealed as applied by London G.A., 1899, s. 5 (2), and Sched. II., Pt. II.; 11 Halsbury's Statutes 1228, 1243; by L.C.C. (General Powers) Act, 1934, Sched.; 27 Halsbury's Statutes 436, which is repealed by London G.A., 1939, Sched. VIII.; 32 Halsbury's Statutes 386.

(*r*) 32 Halsbury's Statutes 327—330.

WOODLANDS, RATING OF

See RATING OF SPECIAL PROPERTIES.

WOODS

See DERATING.

WORKHOUSE

See INSTITUTIONAL RELIEF.

WORKING BALANCES

See RATE ESTIMATES.

WORKMEN

See STAFF; WORKMEN'S COMPENSATION.

WORKMEN'S COMPENSATION

As large employers of labour, local authorities are seriously affected by the provisions of the various Acts relating to workmen's compensation. The general law on the subject is contained in the following statutes :

Workmen's Compensation Acts, 1925 (*a*) and 1926 (*b*) ; Workmen's Compensation (Transfer of Funds) Act, 1927 (*b*) ; Workmen's Compensation (Silicosis and Asbestosis) Acts, 1930 (*c*) ; Workmen's Compensation Act, 1931 (*d*) ; Factories Act, 1937, sects. 38, 45, 64 (*e*) ; Workmen's Compensation (Amendment) Act, 1938 (*f*) ; Workmen's Compensation (Supplementary Allowances) Act, 1940 (*g*).

In addition there is a very large volume of case law on this subject, for which Butterworths' Workmen's Compensation Reports should be consulted, and in regard to general principles reference should be made to Halsbury's Laws of England (Hailsham ed.), vol. 34, and Willis's Workmen's Compensation (38rd ed., 1940).

In addition to being affected by the Acts as employers, local authorities who are public assistance authorities are affected by sect. 41 of the Workmen's Compensation Act, 1925 (*h*). This section provides for the recovery from employers, of relief granted to their employees pending settlement of claims for compensation. The public assistance authority is required to serve notice on the employer and can then recover from arrears of compensation, all sums paid by way of relief in excess of the amount which would have been paid had compensation been available immediately.

It is also a frequent practice for public assistance authorities to grant relief "on loan" with a view to recovering it from any lump sum

(*a*) 11 Halsbury's Statutes 513.

(*c*) 23 Halsbury's Statutes 209.

(*e*) 30 Halsbury's Statutes 234, 236, 246.

(*g*) 3 & 4 Geo. 6, c. 47.

(*b*) *Ibid.*, 601.

(*d*) 24 Halsbury's Statutes 269.

(*f*) 31 Halsbury's Statutes 431.

(*h*) 11 Halsbury's Statutes 579.

settlement of a claim for compensation. As such settlements are intended to compensate the injured person for loss of earning capacity in the future, this practice is difficult to justify, especially having regard to the terms of sect. 40 of the Workmen's Compensation Act, 1925 (*i*), which prohibits the assignment or charge of sums paid by way of commutation of compensation. [922]

London.—The Workmen's Compensation Acts apply to London local authorities.

The London Government Act, 1939, sect. 92 (*j*), enables the L.C.C. in their discretion to pay compensation in respect of any workman or persons employed by them who may be killed or injured in the course of employment. Such compensation is not to prejudicially affect any other rights to damages or compensation against any person other than the council, or (except as may be agreed when the compensation is granted), against the council. Sect. 193 of the same Act (*k*) enables the L.C.C. to make contributions up to an aggregate of £500 per annum towards hospitals, etc., in which any employee of the council is treated. The L.C.C. (General Powers) Act, 1930, sect. 61 (*l*), enables the council to grant gratuities in respect of non-pensionable employees who die or become disabled or incapacitated through age, sickness or other infirmity while in the service of the council. [923]

(*i*) 11 Halsbury's Statutes 578.
(*k*) *Ibid.*, 346.

(*j*) 32 Halsbury's Statutes 302.
(*l*) 23 Halsbury's Statutes 365.

WORKS COMMITTEE

This title refers to the committee of a local authority which is charged with the general control of the Engineer and Surveyor's Department. The nature and extent of the functions of the committee vary in different places. In some cases the committee deals with little more than highways, sewers and sewage disposal, and there are separate committees for such matters as public cleansing, parks and pleasure grounds, public lighting, architectural and building work, transport, etc. Except in some of the larger towns, however, the usual practice is to include within the duties of the committee most, if not all, of these matters. The committee is sometimes known as the Public Works Committee or Highway Drainage and Works Committee, or under some even more comprehensive title.

There is a difference of opinion as to the relative advantages of one committee dealing with the whole of the sections of the council's work mentioned above, and an independent committee in separate control of each section. Those who advocate the latter arrangement are of opinion that a system of separate departments, each with its own responsible head directly reporting and responsible to its own committee, promotes closer attention to detail and greater efficiency. The supporters of the alternative system of one department with a responsible chief to co-ordinate its various sections under the control of a main committee, contend that this arrangement should usually be both more economical and more efficient. It is pointed out that where there

is a number of watertight departments, there is a tendency for each committee and its officers to endeavour to justify the building up of a substantial organisation with its own administrative, technical and clerical staff, depots, offices, transport, plant, etc., by unduly increasing its activities and expenditure. Moreover a centralised organisation enables purchases to be made in larger quantities and on more advantageous terms, and expenditure to be reduced by the interchange of staff, workmen, transport and plant. Generally, one drawing office, under a principal technical assistant, one clerical and accounts department under a chief clerk, a limited number of depots used in common, stores and storekeepers available for all sections, and transport and plant upon which all sections can draw as required will suffice and be found quite satisfactory.

Where there is separate control it is not unusual to find plant and surplus material lying idle in one department, which could well be utilised in another department and to find transport returning empty when other transport is being employed in the same direction by another department.

It is admitted that separate control for some services mentioned may be justified in very large towns, but it is suggested that the great majority of local authorities will find it more advantageous to adopt the principle of a main committee controlling all services employing appreciable numbers of workmen (except generally revenue earning services, such as water and gas works), and involving engineering, surveying and building works, with such sub-committees as may be found desirable according to local circumstances.

The duties of the committee usually include the examination and approval of plans for new streets and buildings submitted in compliance with local building bye-laws. Town planning matters are, however, often dealt with by a separate committee, and in some cases it has been found convenient to transfer to this committee all applications under the building bye-laws.

In the larger towns where the Works Committee—or its equivalent—controls all or most of the services mentioned, it is usual to appoint sub-committees to deal in more detail with individual services and report to the main committee. There may, for instance, be an improvements sub-committee, whose function it is to examine and report upon schemes for new works and improvements; a cleansing sub-committee, who report upon the work of road cleansing and the removal and disposal of house and trade refuse, and complaints relating thereto; an accounts sub-committee, who examine accounts and pass them to the finance committee, and report in reference to wages and conditions of employment, and the conduct and efficiency of the staff; and a public lighting sub-committee.

The improvements sub-committee is sometimes given the responsibility of visiting and inspecting works and depots and sites of proposed improvements and reporting thereon. This may be very useful so long as the members realise that they are acting as administrators and not as technical experts. It is obvious that the officers of the council cannot be held responsible in cases where their technical advice is rejected in favour of the advice of a councillor.

One considerable advantage of a main committee having full knowledge of the activities and requirements of the various sections of work is apparent when annual estimates are being prepared. With a number of water-tight committees and independent chief officers, there is a

tendency for each committee to endeavour to secure as large a proportion as possible of the money available. The extent to which it is successful in this respect will often depend largely upon the ability and persistency of its chairman or representative on the finance committee. A single committee, in general control, is more likely to distribute the available funds in the best interests of the public.

The membership of a Works Committee will depend largely upon the size of the council. The numbers range from about ten in the smaller authorities to about twice that number in the larger. Sub-committees usually vary from five to fifteen.

It is advisable that the chairman, and, in large authorities, the vice-chairman, of this, the largest spending committee of the council, should be members of the finance committee so that this committee may have the benefit of first-hand information in regard to the expenditure of the Works Committee.

The annual estimates having been passed by the finance committee and the council, the Works Committee is usually responsible for the expenditure of the sums allocated to the work of its department. It is a general practice to authorise the chief officer of the department to expend the sums required for wages upon authorised work, and to give orders for work and material, subject to a limit—generally of from £20 to £100 in respect of each item—upon his own responsibility. Authority for other expenditure of a special character is given by resolution of the committee confirmed by the council, and for normal items, such as the purchase of stores, upon requisitions presented to and approved at the meetings of the committee. The requisition book, or sheets, are ruled in columns, in which are set out the quantity, description and estimated cost of the goods required, and in respect of each item the purpose for which the goods are to be used and the vote number in the estimates.

In some cases committees are required to report the most trivial matters to the council, but in others it is recognised that the time of both the council and the committee is saved by authorising the committee to assume responsibility for dealing with certain matters of administrative detail.

It is the general practice for the chief officer of the committee to present a report each month in reference to the activities of his department including the number of men employed in the different sections, and any unforeseen circumstances which have arisen, particularly those which may involve extra expenditure. Such reports form a valuable record, and enable the chief officer to keep the committee informed of the progress of works and difficulties which may arise from time to time. [924]

London.—Metropolitan borough councils appoint works and highways committees to deal with questions of streets, buildings and other consequential matters. As to the power of appointment and membership of committees, see London Government Act, 1939, Part III (a).

The L.C.C. and the common council of the City do not appoint Works Committees as such. [925]

WORKS DEPARTMENT

See BOROUGH ENGINEER AND SURVEYOR ; COUNTY ENGINEER ;
SURVEYOR OF DISTRICT COUNCILS.

WORKSHOPS

See DERATING.

YARDS

See REPAIR OF ROADS.

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See INFANTS, CHILDREN, AND YOUNG PERSONS.

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